IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

JAN 26 1973

MICHAEL RODAK, JR., CLERK

ARLES COLES DIGGS, SHIRLEY ANITA CHISHOLM, WILLIAM LACY CLAY, GEORGE WASHINGTON COLLINS, JOHN CONYERS, RONALD V. DELLUMS, WALTER E. FAUNTORY, AUGUSTUS F. HAWKINS, RALPH HAROLD METCALFE, PARREN JAMES MITCHELL, ROBERT N. C. NIX, CHARLES B. RANGEL, LOUIS STOKES, as citizens and members of Congress, House of Representatives; DAVIS M'GABE, individually and on behalf of the class of all refugees from Southern Rhodesia residing in the United States who wish to return to their homeland; AMERICAN COMMITTEE ON AFRICA; COUNCIL FOR CHRISTIAN SOCIAL ACTION OF THE UNITED CHURCH OF CHRIST; EPISCOPAL CHURCHMEN FOR SOUTH AFRICA; IFCO-ACTION; SOUTHERN AFRICA COMMITTEE; SOUTHERN CHRISTIAN LEADERSHIP CONFERENCE; ZIMBABWE AFRICAN NATIONAL UNION; and THOMAS M. FRANCK, EDWARD WEISBAND, BERT LOCKWOOD, SHELLY FENCHEL, JOEL CARLSON, ROBERT GOLDSCHMIDT, ROBERT JANOSIK, NIGEL RODLEY, DIANE FLAHERTY, ANTOINE VAN DONGER, as concerned individuals; GORE VIDAL, individually and on behalf of the class of all authors whose books have been banned in Southern Rhodesia,

Petitioners,

v.

EORGE P. SCHULZ, as Secretary of the Treasury of the United States, Department of the Treasury; STANLEY L. SOMMERFIELD, as Acting Director of the Office of Foreign Assets; MYLES J. AMBROSE, as Commissioner of the Bureau of Customs, Department of the Treasury; and UNION CARBIDE CORPORATION,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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TABLE OF CONTENTS

	PAGE
OPINIONS BELOW	2
JURISDICTION	3
QUESTIONS PRESENTED FOR REVIEW	3
STATUTES, RESOLUTIONS, REGULATIONS AND EXECUTIVE ORDERS INVOLVED	4
STATEMENT OF THE CASE	5
PROCEEDINGS BELOW	13
REASONS FOR GRANTING THE WRIT	17
I—The decision below, contrary to the Constitution, gives the President power to breach a treaty obligation of the United States	18
II—The decision below is contrary to the long-standing rule that, though Congress may abrogate a treaty, it must do so in clear and precise language and that a statute should if possible, be construed in a manner consistent with treaty obligations	24
III—The decision below fails to recognize the impact of this Nation's commitment to the United Nations as affecting treaty obligations of this nation to that body	28
CONCLUSION	32
APPENDIX:	
United Nations Charter—Signed by the United States on June 26, 1945, at the U.N. Conference on International Organization, at San Francisco, California	1a

PAGE

Resolution 232 (1966) Adopted by the Security Council on 16 December 1966 ..... 2a

Resolution 253 (1968) Adopted by the Security Council on 29 May 1968 ..... 6a

Resolution 314 (1972) Adopted by the Security Council on 28 February 1972 ..... 14a

Sec. 5, United Nations Participation Act, as amended (22 U.S.C., § 287 (c)) 16a

Executive Order No. 11322 Jan. 5, 1967, 4 F.R. 119 .. 17a

Executive Order No. 11419 July 29, 1968, 33 F.R. 10837 ..... 21a

Byrd Amendment (Sec. 503 of the Military Procurement Act of 1971, effecting an amendment to the Strategic and Critical Materials Procurement Act, 50 U.S.C., § 98-98(h), 85 Stat. 427) 26a

General License issued by the Office of Foreign Assets Control, 37 F. Reg. 1108 ..... 27a

Letter from the Department of State 30a

Excerpt from Report of the Office of Emergency Preparedness as of June 30, 1971 ..... 33a

Exhibit A—Opinion of the United States District Court for the District of Columbia, dated June 19, 1972 ..... 34a

Exhibit B—Opinion of the United States Court of Appeals for the District of Columbia Circuit, decided October 31, 1972 ..... 47a

Exhibit C—Order of the United States Court of Appeals for the District of Columbia Circuit (October 31, 1972) 56a

PAGE

Cases Cited

Clark v. Allen, 331 U. S. 503 (1947) 20

Chew Hoeg. v. United States, 112 U. S. 536 (1884) 26

Cook v. United States, 288 U. S. 102 (1933) 24

Lauritzen v. Larsen, 345 U. S. 571 (1953) 24

Menominee Tribe v. United States, 391 U. S. 404 (1968) 24

Murray v. The Charming Betsy, 2 Cranch 64 24

Pigeon River Co. v. Cox Co., 291 U. S. 138 (1934) 24

Techt v. Hughes, 229 N. Y. 222, 128 N. E. 2d 485 (1920) 20

The Amiable Isabella, 19 U. S. (6 Wheat.) 1 (1921) 20

United States v. Lee Yen Tai, 185 U. S. 213 (1902) 24

Van der Weyde v. Ocean Transport Co., 297 U. S. 114 (1936) 20, 23

United States Constitution Cited

Article II, Section 2, Clauses 2, 3 21

Article VI, Clause 2 21

Statutes Cited

Military Procurement Act (1971) (Byrd Amendment) 10, 11, 13-15, 18, 26, 28

Sec. 503 5

Restatement of Foreign Relations Law of the United States (1965):

Sec. 163 23

PAGE

Strategic and Critical Materials Procurement Act, 50 U.S.C., Sec. 98-98(h), 85 Stat. 427 ..... 5, 10, 12

22 U.S.C.:

Sec. 287 5

Sec. 287(c) 5

Sec. 287(c)(b) 10

28 U.S.C.:

Sec. 2101(c) 3

Sec. 1254(1) 3

United Nations Participation Act, 59 Stat. 620 ..... 5, 11

Regulations Cited

37 F. Reg. 1108 ..... 5, 11

Other Authorities Cited

Charter of the United Nations, signed by the United States at the U.N. Conference on International Organization, at San Francisco, California (June 26, 1945):

Ch. V, Art. 25 ..... 4, 6, 15

Art. 39 30

Art. 50 ..... 19, 31

Art. 103 31

Ch. VII, Art. 41 ..... 4, 5, 9, 29

Committee on Foreign Relations, U. S. Senate, 92nd Congress, 1st Session, on S. 1404:

p. 15 11

PAGE

117 Cong. Rec., 15590, 15594 ..... 25, 26

Executive Order:

No. 11322, January 5, 1967 ..... 5, 10

No. 11419, July 29, 1968 5

FA Res. 2946, December 11, 1972 16

Fulbright Amendment 26

5 Hackworth, Digest of International Law (1940):

319, 332, 333, 337, 340 22

Note, 58 Va. L. Rev. (1972):

511 27

Report of the United States Department of State, Re: Results of San Francisco Conference, Publication No. 2349, pp. 88, 90-91 30

Resolutions of the U.N. Security Council:

No. 232, December 16, 1966 ..... 4, 6, 10

No. 253, May 29, 1968 ..... 4, 7, 17

No. 314, February 28, 1972 ..... 4, 15

No. 318 15

No. 320, September 29, 1972 16

S. 773, 92nd Cong., 1st Sess., 1971 12

IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-1037

CHARLES COLES DIGGS, SHIRLEY ANITA CHISHOLM, WILLIAM LACY CLAY, GEORGE WASHINGTON COLLINS, JOHN CONYERS, RONALD V. DELLUMS, WALTER E. FAUNTORY, AUGUSTUS F. HAWKINS, RALPH HAROLD METCALFE, PARREN JAMES MITCHELL, ROBERT N. C. NIX, CHARLES B. RANGEL, LOUIS STOKES, as citizens and members of Congress, House of Representatives; DAVIS M'GABE, individually and on behalf of the class of all refugees from Southern Rhodesia residing in the United States who wish to return to their homeland; AMERICAN COMMITTEE ON AFRICA; COUNCIL FOR CHRISTIAN SOCIAL ACTION OF THE UNITED CHURCH OF CHRIST; EPISCOPAL CHURCHMEN FOR SOUTH AFRICA; IFCO-ACTION; SOUTHERN AFRICA COMMITTEE; SOUTHERN CHRISTIAN LEADERSHIP CONFERENCE; ZIMBABWE AFRICAN NATIONAL UNION; and THOMAS M. FRANCK, EDWARD WEISBAND, BERT LOCKWOOD, SHELLY FENCHEL, JOEL CARLSON, ROBERT GOLDSCHMIDT, ROBERT JANOSIK, NIGEL RODLEY, DIANE FLAHERTY, ANTOINE VAN DONGER, as concerned individuals; GORE VIDAL, individually and on behalf of the class of all authors whose books have been banned in Southern Rhodesia,

Petitioners,

v.

GEORGE P. SCHULZ, as Secretary of the Treasury of the United States, Department of the Treasury; STANLEY L. SOMMERFIELD, as Acting Director of the Office of Foreign Assets; MYLES J. AMBROSE, as Commissioner of the Bureau of Customs, Department of the Treasury; and UNION CARBIDE CORPORATION,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

To the Justices of the Supreme Court of the United States:

Petitioners, Charles Coles Diggs, Shirley Anita Chisholm, William Lacy Clay, George Washington Collins, John Conyers, Ronald V. Dellums, Walter E. Fauntroy, Augustus F. Hawkins, Ralph Harold Metcalfe, Parren James Mitchell, Robert N. C. Nix, Charles B. Rangel, and Louis Stokes, as citizens and members of Congress, House of Representatives; Davis M'Gabe, individually and on behalf of the class of all refugees from Southern Rhodesia residing in the United States who wish to return to their homeland; American Committee on Africa; Council for Christian Social Action of the United Church of Christ; Episcopal Churchmen for South Africa; IFCO-Action; Southern Africa Committee; Southern Christian Leadership Conference; Zimbabwe African National Union; and Thomas M. Franck, Edward Weisband, Bert Lockwood, Shelly Fenchel, Joel Carlson, Robert Goldschmidt, Robert Janosik, Nigel Rodley, Diane Flaherty, and Antoine Van Donger, as concerned individuals; Gore Vidal, individually and on behalf of the class of all authors whose books have been banned in Southern Rhodesia, respectfully pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit sustaining the judgment of the United States District Court for the District of Columbia dismissing the Complaint herein.

Opinions Below

The opinions of the Court of Appeals and of the District Court have not been reported. Copies of those opinions are appended hereto as Exhibits A and B.

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Jurisdiction

The judgment of the Court of Appeals for the District of Columbia Circuit was rendered on October 31, 1972. This Petition is filed within the period fixed by 28 U.S.C., Sec. 2101(c).

The jurisdiction of this Court is invoked under 28 U.S.C., Sec. 1254(1).

Questions Presented for Review

1. Granted that the Congress has the power, by clearly expressed legislation, to violate a treaty obligation of the United States, does the President have the power so to do in the absence of a clear legislative directive requiring that he do so?

2. Where a statute of Congress does not (a) refer to a treaty obligation or the abrogation thereof, (b) does not in terms require violation of a treaty, (c) does not require executive action inconsistent with any treaty, and (d) plainly leaves the executive with an opportunity to pursue a course of conduct which would not be violative of a treaty obligation, can it be said that the legislature has exercised a power to abrogate the treaty merely because some of its sponsors wished that would be the result of the legislation?

3. Does the relationship between the United States and the United Nations alter the normal rules as to the reservation of the sovereign right to abrogate or violate treaties; more specifically, in view of the veto power which the United States has within the United Nations, does the United States retain additionally the power to abrogate or violate its obligations to the United Nations with

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respect to specific resolutions of the Security Council, including those for which it voted within the chambers of the United Nations?

4. Assuming the answer to question 3 is in the affirmative, what branch of the government as a matter of domestic Constitutional law of the United States has the power to breach obligations of the United States to the United Nations and what methods or procedures are required to be employed in effecting such a breach? More specifically, the executive branch of the government having voted within the councils of the United Nations for a mandatory resolution, does the Congress retain the power to override such a vote; if so, what degree of specificity and clarity of expression by the Congress is required; and may it be said that legislation which does not mandate a breach of treaty obligations to the United Nations nevertheless authorizes the President by executive action to effect such a breach?

Statutes, Resolutions, Regulations and Executive Orders Involved

(The documents here referred to are set out in full in the Appendix hereto.)

1. Chapter V, Article 25 and Chapter VII, Article 41 of the Charter of the United Nations, signed by the United States at the U.N. Conference on International Organization, at San Francisco, California, on June 26, 1945, 59 Stat. 1031 (1a).

2. Resolutions of the U.N. Security Council:

   No. 232, December 16, 1966 (2a);

   No. 253, May 29, 1968 (6a); and

   No. 314, February 28, 1972 (14a).

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3. United Nations Participation Act, 22 U.S.C., Sec. 287(c), 59 Stat. 620 (16a).

4. Executive Orders:

   No. 11322, January 5, 1967 (17a); and
   No. 11419, July 29, 1968 (21a).

5. Byrd Amendment, constituting Sec. 503 of the Military Procurement Act of 1971, effecting an amendment to the Strategic and Critical Materials Procurement Act, 50 U.S.C., Sec. 98-98(h), 85 Stat. 427 (26a).

6. General License issued by the Office of Foreign Assets Control, 37 F. Reg. 1108 (27a).

Statement of the Case

This is an action brought by a number of plaintiffs seeking injunctive and declaratory relief to prevent the importation from Southern Rhodesia of metallurgical chromite and other materials. The substantive basis of the suit as set out in the amended complaint and the amendment thereto is essentially as follows:

On August 8, 1945, the United States ratified its adherence to the Charter of the United Nations and became a permanent member of the Security Council. 59 Stat. 1031 (1945). By the United Nations Participation Act (22 U.S.C. §287), the United States articulated certain domestic procedures for the means of executive implementation and enforcement of the obligations which it had previously assumed under the United Nations Charter.

The U.N. Charter provides in Chapter VII, *Actions with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggresion,* Article 41, as follows:

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> "The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio and other means of communication, and the severance of diplomatic relations."

Chapter V, *The Security Council,* provides in Article 25 as follows:

> "The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter."

As outlined in the affidavit of the plaintiff Carlson filed in the court below, Southern Rhodesia is an area where the population is roughly 95% Black. In 1965, the 5% of whites illegally seized power from Great Britain and announced their intention to maintain minority rule for the foreseeable future. The United Kingdom, not wishing to use force of arms, called upon the international community to help bring the illegal government to its knees and accordingly, pursuant to Chapter VII aforesaid, on December 16, 1966, the United Nations Security Council adopted Resolution 232, which provided the following:

> "The Security Council,
>
> Reaffirming its resolutions 216 (1965) of 12 November 1965, 217 (1965) of 20 November 1965 and 221 (1966) of 9 April, 1966, and in particular its appeal to all States to do their utmost to break off economic relations with Southern Rhodesia,

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Deeply concerned that the Council's efforts so far and the measures taken by the administering Power have failed to bring the rebellion in Southern Rhodesia to an end,

• • •

Acting in accordance with Articles 39 and 41 of the United Nations Charter,

• • •

Decides that all States Members of the United Nations shall prevent:

The import into their territories of asbestos, iron ore, chrome, pig-iron, sugar, tobacco, copper, meat and meat products and hides, skins and leather originating in Southern Rhodesia and exported therefrom after the date of the present resolution;

Any activities by their nationals or in their territories which promote or are calculated to promote the export of these commodities from Southern Rhodesia and any dealings by their nationals or in their territories in any of these commodities originating in Southern Rhodesia and exported therefrom after the date of the present resolution, including in particular any transfer of funds to Southern Rhodesia for the purposes of such activities or dealings; • • •"

The matter of Southern Rhodesia came before the Security Council on subsequent occasions and the resolve of the Security Council to impose mandatory economic sanctions for the purpose of defeating the illegal regime of Southern Rhodesia has been repeated and expanded. Under date of May 29, 1968, Resolution 253 was adopted, reading as follows:

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"The Security Council,

Recalling and reaffirming its resolutions 216 (1965) of 12 November 1965, 217 (1965) of 20 November 1965, 221 (1966) of 9 April 1966, and 232 (1966) of 16 December 1966,

• • •

Condemning the recent inhuman executions carried out by the illegal regime in Southern Rhodesia which have flagrantly affronted the conscience of mankind and have been universally condemned,

• • •

Recognizing the legitimacy of the struggle of the people of Southern Rhodesia to secure the enjoyment of their rights as set forth in the Charter of the United Nations and in conformity with the objectives of General Assembly resolution 1514 (XV) of 14 December 1960,

• • •

Acting under Chapter VII of the Charter of the United Nations,

1. Condemns all measures of political repression, including arrests, detentions, trials and executions which violate fundamental freedoms and rights of the people of Southern Rhodesia, and call upon the Government of the United Kingdom to take all possible measures to put an end to such actions;

• • •

3. Decides that, in furtherance of the objective of ending the rebellion, all States Members of the United Nations shall prevent:

(a) The import into their territories of all commodities and products originating in Southern Rhodesia and exported therefrom after the date of this

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resolution (whether or not the commodities or products are for consumption or processing in their territories, whether or not they are imported in bond and whether or not any special legal status with respect to the import of goods is enjoyed by the port or other place where they are imported or stored);

(b) Any activities by their nationals or in their territories which would promote or are calculated to promote the export of any commodities or products from Southern Rhodesia; and any dealings by their nationals or in their territories in any commodities or products originating in Southern Rhodesia and exported therefrom after the date of this resolution, including in particular any transfer of funds to Southern Rhodesia for the purposes of such activities or dealings; * * *"

The 1966 Resolution refers to an embargo of specified products, the 1968 Resolution imposes an embargo on *all* products.

In the more than a quarter century that the United Nations has been in operation, the imposition of mandatory economic sanctions against Southern Rhodesia is the *sole* instance where the U.N. has acted pursuant to Chapter VII, Article 41. This stark fact poignantly illustrates the gravity with which the member states view the situation in Southern Rhodesia.

The Government of the United States as a permanent member of the Security Council had the power, if it chose to, to veto any of the foregoing resolutions. In no case did the United States exercise its veto power and in fact these resolutions were adopted with the affirmative vote of the United States.

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Pursuant to the U.N. Charter, the United Nations Participation Act, and Security Council Resolution 232, the President of the United States issued Executive Orders to trigger the domestic criminal sanctions (provided for in 22 U.S.C. §287(c)(b)) for violation of the embargo on shipments from Southern Rhodesia, and directed the Secretaries of State, Treasury and Commerce to take steps to enforce the embargo. See Executive Orders 11322 of January 5, 1967 and 11419 of July 29, 1968, both set forth in the appendix hereto (17a).

Thus, since the adoption of the Security Council Resolution of December 16, 1966, and until the acts hereinafter complained of, there had been an embargo of commercial traffic between the United States and Southern Rhodesia.

On November 17, 1971, the President of the United States signed into law the Military Procurement Act of 1971, Sec. 503 of which (hereinafter and commonly known as the Byrd Amendment) constituted an amendment to the Strategic and Critical Materials Stock Piling Act (50 U.S.C. §98-98(h), by adding the following:

> "Section 10. Notwithstanding any other provision of law, on and after January 1, 1972, the President may not prohibit or regulate the importation into the United States of any material determined to be strategic and critical pursuant to the provisions of this Act, if such material is the product of any foreign country or area not listed as a Communist-dominated country or area in general headnote 3(d) of the Tariff Schedules of the United States (19 U.S.C. §1202) for so long as the importation into the United States of material of that kind which is the product of such Communist-domi-

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nated countries or areas is not prohibited by any provision of law."

The law was adopted over the objections of the administration when it was originally proposed as an amendment to the U.N. Participation Act.* The sponsors of the legislation effectively forced Presidential approval by tacking the bill on as a rider to the military appropriations act.

On January 25, 1972, purportedly acting pursuant to the Byrd Amendment, the Office of Foreign Assets Control (OFAC) issued a General License (37 Fed. Reg. 1108) authorizing the importation of a wide range of materials from Southern Rhodesia, including 72 items which had been listed by the Office of Emergency Preparedness (OEP) in its reports to Congress of stock piles. The

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* David D. Newsom, Assistant Secretary of State for African Affairs, testifying for the administration on July 7 and 8, 1971, in hearings before the Committee on Foreign Relations, U. S. Senate, 92nd Congress, 1st Session, on S. 1404 to Amend the United Nations Participation Act of 1945, said:

> "This proposal is contrary to U. S. policy interests. It would while providing relief with regard to one commodity—a commodity for which, I might add, relief can be justified not on the basis of national security interests but on the basis of relative price considerations—call into serious question our will to fulfill our international obligations.
>
> "We are not unmindful of the national interest which concerns those who propose this legislation. Were the chrome situation indeed critical we, too, would seek measures of relief. We do not now, however, consider it such; for us the overriding considerations are our international obligations and our desire to do nothing which would undermine movement on an acceptable solution to the Rhodesian problem." (p. 15)

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said items included, among others, metallurgical chromite as to which the reports to Congress showed a surplus. The list also included feathers and down, caster oil, and sperm oil. This action by the OFAC was taken despite the fact that the Executive Orders implementing the Security Council Resolutions have never been rescinded.*

The Strategic and Critical Materials Stock Piling Act was originally derived from legislation enacted in 1939 and is now administered by the OEP. Under that statute, stockpiles are maintained of designated materials and regular reports are made to Congress. In its report as of June 30, 1971, the OEP listed 72 items, as appears in the table reproduced in the appendix herein (33a). The total amount stockpiled was far in excess of stated stockpiling objectives, and in respect to metallurgical chromite, the report showed a stockpile objective of 3,086,800 short dry tons as against an inventory of 5,331,613 short dry tons, or an excess of 2,244,813 short dry tons.

In 1971, the OEP presented to Congress a bill (S. 773, 92nd Cong., 1st Sess., 1971) which would authorize disposal of 1,313,600 short dry tons of excess metallurgical chromite from the stockpile.

Following the issuance of the General License aforesaid, two shipments of metallurgical chromite from Southern Rhodesia to the United States were undertaken, one by Union Carbide to the extent of 59,362,265 lbs. and the other by Foote Mineral to the extent of 55,803,392 lbs. The arrival of these shipments and the possibility of further shipments prompted the within litigation against both corporations and the government officials involved with licensing and permitting the importations.

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* Thus the United States recognizes the Security Council's embargo except as to the 72 items listed by the OEP.

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Petitioners alleged, and respondents did not deny, that the chromite which has been imported will be used for the manufacture of stainless steel which will go exclusively to non-defense purposes, more specifically, for the fabrication of kitchenware.

Petitioners sought seizure of the two shipments of metallurgical chromite and other materials which had been imported and also an injunction to prevent further shipments into the United States from Southern Rhodesia.

Petitioners asserted that the Byrd Amendment could not, and in any event did not, vitiate the commitment of the United States undertaken in the Charter of the United Nations. Accordingly, petitioners contended that the General License issued by the Office of Foreign Assets Control (upon which the shipments of chrome were permitted) was void.

Proceedings Below

Petitioners sought temporary relief, which was denied. Thereafter, cross-motions for summary judgment were made and respondents made a motion to dismiss for lack of standing. The trial court rendered an opinion on June 19, 1972 and entered judgment on June 26 dismissing the complaint for lack of standing.*

The Court of Appeals, however, found that some of the petitioners did establish adequate standing and proceeded to the merits. It held in effect that:

a) Congress has the power to set treaty obligations "at naught" (53a):

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* Earlier the proceedings had been dismissed against Foote Mineral for lack of personal jurisdiction (see note 4, opinion of District Court 37a).

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b) Even though the Byrd Amendment permits a course of conduct by the executive which would not constitute a violation of a treaty obligation, the court would not require the President to choose such a course (54a); and

c) Even if the legislation did not on its face require the President to breach a treaty obligation, the "purpose" of the Byrd Amendment was "to detach this country from the U.N. boycott of Southern Rhodesia in blatant disregard of the treaty undertakings" (*ibid.*), and since that was clearly the intent of the Congress, the "so-called options given to the President are, in reality, not options at all. In any event, they are in neither case alternatives which are appropriately to be forced upon him by a court." (55a)

It should be observed that the executive branch of the government at all times opposed adoption of the Byrd Amendment (*supra*, fn. p. 11) and sought its repeal after it was adopted (see letter of Assistant Secretary of State Irwin (30a)). Thus, the suggestion by the lower court that the within proceeding touched upon the political question doctrine because it involved an effort to achieve judicial compulsion of the executive to take a foreign affairs position contrary to its wishes is a confusion of the issues. This is rather a case where the executive felt compelled against its stated wishes to pursue a course of conduct because it considered itself bound by legislation. Our disagreement with the executive branch of the government is not on foreign policy but upon its judgment that the legislation required a given result and that the executive was compelled to respond in a particular fashion. Thus, the issue is clearly a question of constitutional law and in no way approaches a political question.

Events since the enactment of the Byrd Amendment confirm two facts: (a) that the executive continues to act

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against its stated foreign policy objectives, and (b) that the matter at issue has seriously affected relations between the United States and other countries.

(a) On or about May 20, 1972, the administration urged repeal of the Byrd Amendment and the State Department addressed a communication to Senator McGee to that effect (the full text of the communication is reprinted at 30a). The administration emphasized the seriousness of this matter as affecting relations between the United States and the international community, as well as the conviction of the administration that neither "economic nor national security considerations affecting chrome are sufficiently compelling to compensate for the adverse foreign policy consequences of the legislation now in effect" (31a):

(b) On February 28, 1972, the Security Council, with the United States abstaining, adopted Resolution 314 (14a), expressing its grave concern "that certain States have not complied with the provisions of resolution 253 (1968), contrary to their obligations under Article 25 of the Charter of the United Nations, and then proceeded to declare that

> "any legislation passed or act taken, by any State with a view to permitting, directly or indirectly, the importation from Southern Rhodesia of any commodity falling within the scope of the obligations imposed by resolution 253 (1968), including chrome ore, would undermine sanctions and would be contrary to the obligations of the States."

The United Nations has on several subsequent occasions, both in the Security Council and finally in the General Assembly, sharply criticized the action of the United States.

On July 28, 1972, by Resolution 318, the United States again abstaining, the Security Council demanded "that all

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Member States should scrupulously carry out their obligations to implement fully Security Council resolution 253 (1968), 277 (1970), and 314 (1972)" and condemned "all acts violating the provisions of Security Council resolutions 253 (1968), 277 (1970) and 314 (1972)."

Security Council Resolution 320, passed on September 29, 1972 with 13 in favor, none against, and the United States again abstaining, was specifically directed at the United States. The Resolution states that the Council is "deeply concerned by the report of the United States that it has authorized the importation of chrome ore and other minerals from Southern Rhodesia" and it "Urges the United States to cooperate fully with the United Nations in the effective implementation of sanctions; * * *"

The General Assembly adopted a Resolution on December 11, 1972 (FA Res. 2946) by a vote of 93 in favor, eight against (including the United States), and 23 abstentions, which strongly condemned the United States. The Resolution includes the following:

> *"The General Assembly*
>
> *Gravely concerned* that, despite the appeals addressed to the Government of the United States of America in General Assembly resolution 2765 (XXVI) of 16 November 1971, that Government continues to permit the importation of chrome and nickel into the United States from Southern Rhodesia, in violation of the relevant provisions of Security Council resolutions 253 (1968) of 29 May 1968, 277 (1970) of 18 March 1970, 288 (1970) of 17 November 1970 and 314 (1972) of 28 February 1972,
>
> * * *

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> *Condemns* the continued importation by the Government of the United States of America of chrome and nickel from Zimbabwe in open contravention of the provisions of Security Council resolutions 253 (1968), 277 (1970), 288 (1970) and 314 (1972) and contrary to the specific obligations assumed by that Government under Article 25 of the Charter, and calls upon the United States Government to desist forthwith from further violations of the sanctions and to observe faithfully and without exception the provisions of the above-mentioned resolutions; * * *"

The problem of enforcement of sanctions against Southern Rhodesia has not gone away; it remains a very live one within the United Nations. The U.N. has created a Committee Established in Pursuance of Security Council Resolution 253 (1968), commonly known as the "Committee of 24", which meets not less than twice a month, and submits reports to the U.N. with respect to the compliance of various nations with the Security Council Resolutions on Southern Rhodesia. Its latest report dated December 22, 1972 (U.N. Doc. S/10852), again calls attention to violations by the United States of the Resolutions.

Reasons for Granting the Writ

The situation presented by this case is the first in the history of the relations between the United States and the United Nations where this nation is acting, in the words of the Court of Appeals, "in blatant disregard of our treaty undertakings" (54a) to that body. The most far-reaching international commitment ever undertaken by this nation is undermined—and yet the questions of what branch of the government has the power and responsibility to effect such a result and the procedures by which

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such a result may be brought about are obscure and unsettled.

The questions presented by this petition are on their face important questions of constitutional law which have not been but should be settled by this Court; they touch upon questions of domestic constitutional law affecting the relationship between this nation and the United Nations.

It is particularly appropriate that the Court deal with the issues presented in this case because, contrary to what was inferred by the Court of Appeals, the case does not involve any effort to effect a course in foreign relations contrary to the policy of the executive. Thus, the case in no way presents to the Court the situation where it would be intervening to impose foreign policy objectives contrary to the stated program of the executive branch of the government, to which the execution of foreign policy is entrusted. Rather, the issues as presented for determination involve questions of the allocation of power and the method of exercising power to abrogate or breach obligations of the United States to the United Nations, questions which plainly need clarification.

I

The decision below, contrary to the Constitution, gives the President power to breach a treaty obligation of the United States.

It is familiar doctrine, as stated by the Court of Appeals, that Congress has "the constitutional power . . . to set treaty obligations at naught" (53a).

But Congress did not do that in this case. The Byrd Amendment plainly does not denounce or break a treaty; it does not even mention that it is dealing with treaty

obligations; and while it may well be that Congress can effect an abrogation of a treaty by the enactment of legislation plainly inconsistent with it, it has not done so in this case.

It is conceded by all parties herein and recognized by the Court of Appeals that the President did have options left to him under the legislation which would not have involved a breach of treaty.* Thus, the breach of the

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*The alternatives available to the President, only two of which were referred to by the Court of Appeals, included at least the following:

1) Termination of importation of chrome from Communist countries;

2) Removal of chrome from the list of strategic and critical materials;

3) A stringent reading of the statute which permitted interpretations to avoid the breach of the embargo (a series of these readings was suggested in the original Complaint);

4) An application pursuant to Article 50 of the U.N. Charter the Security Council, for a consideration of 'special economic problems arising from the carrying out of [preventive or enforcement measures under Articles 48 and 49] . . . with regard to a solution of these problems.' Zambia obviously had certain problems as a result of its unique geographical location and economic dependence on Southern Rhodesia, as a result of which Par. 15 of the 1968 Resolution (12a) makes special note of a call for assistance from other nations.

The failure of the administration to adopt any of these options may have been the result of a view that they were unattractive, or that it ought to comply with what it believed to be the intent of the sponsors of the legislation, even though the legislation does not articulate that intent, or for some other unstated reason. Whatever may have been the considerations which determined the administration's course, the basic constitutional issues here presented are unaffected.

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treaty obligation in this case was a choice made by the President and not dictated by Congress. Accordingly, a question presented by this case is whether there is Presidential power to violate a treaty, absent a clear legislative mandate.

Surprisingly, this question has never been squarely dealt with by this Court. In the one case which might have involved the question, the Court concluded that "the question as to the authority of the executive in the absence of Congressional action, or action by the treaty-making power, to denounce a treaty of the United States is not here involved." *Van der Weyde* v. *Ocean Transport Co.*, 297 U.S. 114, 117 (1936).

Though the Constitution is specific as to the treaty-making power, it is silent on the treaty-terminating power.

This Court, as stated by the Court of Appeals, has held that Congress, by clearly defined legislation, has the power to override a treaty.

Mr. Justice (then Judge) Cardozo, sitting on the Court of Appeals of New York, in his opinion in *Techt* v. *Hughes,* stated that there were two procedures for denunciation of a treaty: "President and Senate may denounce the treaty, and thus terminate its life. Congress may enact an inconsistent rule, which will control the action of the courts." 229 N.Y. 222, 128 N.E. 2d 485 (1920). This formulation was quoted with approval by the Court in *Clark* v. *Allen,* 331 U.S. 503 at 509 (1947).

The foregoing was foretold by Mr. Justice Story in *The Amiable Isabella*, 19 U.S. (6 Wheat.) 1, 75 (1921):

> "The obligations of the treaty could not be changed or varied, but by the same formalities with which

> they were introduced; or, at least, by some act of as high an import, and of as unequivocal an authority."

The executive branch of the government of course is vested with major responsibility in the field of foreign relations but the only references in the Constitution to Presidential power in respect to treaties are that:

(a) He may make treaties, by and with the advice and consent of the Senate, provided "two-thirds of the Senators present concur" (Art. II, Sec. 2, Clause 2), and

(b) He is required to "take care that the laws be faithfully executed" (Art. II, Sec. 2, Clause 3), and of course treaties are part of "the supreme law of the land" (Art. VI, Clause 2).

Since the Constitution puts the Presidential responsibility to enforce a treaty on the same level as that of a law, it would not appear that the President has any more power to abrogate or breach a treaty than he has to repeal a law.

It is understandable that the Court would recognize a procedure of abrogation by the President and a two-thirds vote of the Senate, acting together, since that is nothing but the converse of making a treaty. Nowhere, however, would there appear to be any authority for executive power alone in this respect.

Repeatedly the State Department has taken the position that the President does not have the power to modify or abrogate a treaty. A clear example can be found in a State Department reply to France upon its request that the United States recognize rights of France in Morocco not included in the then effective United States treaty with Morocco. "The Department of State took the

position that . . . 'as the adherence of this Government would seem to imply the modification of certain of its existing treaty rights, the consent to such adherence on the part of the United States involves the conjoint action of the treaty-making powers of this Government and our acceptance of the agreement in question could therefore be made only by and with the advice and consent of the Senate." 5 Hackworth, *Digest of International Law,* 333 (1940).

This precedent is repeated in 1920 when the State Department again confirmed that a 1920 treaty in question "could not be modified save by agreement of all the Powers signatory thereto: and such modification in the case of the United States would not be effective without the approval of the Senate." (*Id.* at 337.)

This formula for treaty modification reappears in a memorandum of the Solicitor for the Department of State in 1931, where it is stated:

> "The President is, of course, without authority, except by and with the advice and consent of the Senate, to modify a treaty provision." (*Id.* at 340)

So far as we know, this is the first case where it has even been contended that there exists Presidential power to violate a treaty absent a clear legislative mandate to that effect.*

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* There are occasional references in the authorities to a Presidential power to "terminate" treaties upon the President's own initiative (5 Hackworth at 319), or to a Presidential power to "denounce" treaties (*id.* at 332). Close analysis reveals, however, that any confusion resulting from these statements is nothing but

(Footnote continued on following page)

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Thus, the instant case presents in sharp focus an issue of fundamental importance relating to the allocation of powers within our system which can and should be determined by this Court.

(Footnote continued from preceding page)

a matter of semantics flowing from imprecise use of terminology. The "termination" or "renunciation" referred to has to do with the President (consistent with recognized principles of international practice) noting the termination of a treaty upon its terms, or as directed by Congress, or because of a breach by the other state. This Court in the *Van der Weyde* case, *supra,* was plainly aware of the distinction. The *Restatement of Foreign Relations Law of the United States* (1965) in Sec. 163 makes clear the limited nature of Presidential power:

> "(1) Under the law of the United States, the President or a person acting under his authority, has, with respect to an international agreement to which the United States is a party, the authority to
>
> (a) take the action necessary to accomplish under the rule stated in § 155 the suspension or termination of the agreement in accordance with provisions included in it for the purpose,
>
> (b) make the determination of conditions that establish that the agreement may be suspended or terminated under the rule stated in § 158 because of its violation by another party or that it is terminated under the rule stated in § 159 as regards a party that has ceased to exist."

We know of no precedent for a Presidential power to *violate* a treaty such as here.

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II

The decision below is contrary to the longstanding rule that, though Congress may abrogate a treaty, it must do so in clear and precise language and that a statute should, if possible, be construed in a manner consistent with treaty obligations.

It is familiar doctrine that "the intention to abrogate or modify a treaty is not to be lightly imputed to the Congress," *Pigeon River Co.* v. *Cox Co.*, 291 U.S. 138 (1934), quoted most recently by this Court in *Menominee Tribe* v. *United States*, 391 U. S. 404, 413 (1968).

But the Court has gone even further. Mr. Chief Justice Marshall laid down the rule that "an act of Congress ought never be construed to violate the law of nations if any possible other construction remains . . ." *Murray* v. *The Charming Betsy*, 2 Cranch 64, 118, reiterated in *Lauritzen* v. *Larsen*, 345 U. S. 571, 578 (1953). See also, *United States* v. *Lee Yen Tai*, 185 U. S. 213 (1902), where the Court said not only that an intention to supercede a treaty must not be lightly assumed but "must appear clearly and distinctly from the words used in the statute." 185 U. S. at 221. See substantially the same language in *Cook* v. *United States*, 288 U. S. 102, 120 (1933).

The rule of statutory construction requiring clarity and incisiveness of Congressional determination to abrogate a treaty was designed to assure the integrity of this country's relationships in the international community.

Abrogation of a treaty is an extremely serious step and one which requires the most deliberate and careful articulation by whichever branches of our government are deemed to have the power so to do. Where the Consti-

tution deals with ratification of a treaty, it requires a two-thirds vote of the Senate. While abrogation of a treaty may be effected by the normal legislative process of the concurrence of both houses of Congress and the signature of the President, the clarity of the determination of Congress is an essential ingredient of the process.

The Court of Appeals, while recognizing the validity of the rule of law—while even recognizing that the legislation before it did not compel the President to abrogate treaty obligations—was nevertheless prepared to approach the question in terms of a search for legislative intention which went behind the language or the requirements of the statute. Thus, the Court of Appeals relied upon an assumption "that no member of Congress voting on the measure was under any doubt about what was involved" (Exhibit B, p. 55a) and that the Byrd Amendment was "presented to the Congress" as "a measure which would make—and was intended to make—the United States a certain treaty violator" (*ibid.*).

Whether or not this is a fair reading of the legislative intent of some of the proponents of the Amendment,* it is exteremely clear that the managers of the Amendment were not prepared to put the legislation before Congress

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* The *supporters* of the legislation were careful to point out that the legislation did not necessarily require the President to break the embargo in its entirety. For example, Senator Allen stated:

> "The section under consideration does not require the United States to scuttle the United Nations embargo against all trade with Rhodesia. I wish that it did. Instead the section deals only with importation of strategic materials which we freely purchase from Communist nations." (117 Cong. Rec., S 15590)

in terms of a mandatory obligation of the President to break the U.N. embargo. The issue in respect to the adoption of this law was closely contested and, indeed, at one time the majority in the United States Senate voted against it. (See vote on the Fulbright Amendment to the Byrd Amendment, 117 Cong. Rec., S 15594.)

Plainly, the sponsors of this legislation were not prepared to present their colleagues with a statute which would have *mandated* a breach of treaty obligations to the United Nations.

But it is the precise purpose of the rule of law which requires clarity of expression in this field that, if Congress presumes to exercise its power to break treaty obligations of the United States, it should assume the responsibility of saying so, and if it does not, then the Court should not supply the missing clarity.

As this Court said in *Chew Heong* v. *United States*, 112 U. S. 536, 539 (1884):

> "[T]he court should be slow to assume that Congress intended to violate the stipulations of a treaty, so recently made with the government of another coutry. 'There would no longer be any security,' says Vattel, 'no longer any commerce between mankind, if they did not think themselves obliged to keep faith with each other, and to perform their promises.' Vattel, Book 2, ch. 12. And as sovereign nations, acknowledging no superior, cannot be compelled to accept any interpretation, however just and reasonable, 'the faith of treaties constitutes in this respect all the security of contracting powers.' *Id.* ch. 17. 'Treaties of every kind,' says Kent, 'are to receive a fair and liberal interpretation, according to the intention of the contracting parties, and

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> are to be kept in the most scrupulous good faith.' 1 Kent Com. 174. * * * Aside from the duty imposed by the Constitution to respect treaty stipulations when they become the subject of judicial proceedings, the Court cannot be unmindful of the fact, that the honor of the government and people of the United States is involved in every inquiry whether rights secured by such stipulations should be recognized and protected. And it would be wanting in proper respect for the intelligence and patriotism of a co-ordinate department of the government were it to doubt, for a moment, that these considerations were present in the minds of its members when the legislation in question was enacted."

The decision of the Court of Appeals, by choosing to find a legislative intent from the objectives of the sponsors of the legislation, relieves the Congress of the necessity for showing responsibility in this field.

The Circuit Court said that this statute was designed to put the United States "in blatant disregard of our treaty undertakings." Not a single sponsor of this legislation was prepared to say that. In fact, by innuendo, indirection, and circumlocution they tried to infer exactly the contrary in their explanations.* And the language of the Amendment itself is a model of tortured confusion, there

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* See, for example, Senator Byrd's statement, ". . . I want to point out that the proposed legislation . . . does not change in any way the charter of the United Nations."

Senator Byrd's erroneous reading of U. S. treaty obligations under the U.N. Charter is effectively dealt with in Note, 58 Va. L. Rev. 511 (1972).

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being a vast gulf between the language of the statute and what is offered as so-called proof of legislative intent.

It is not an accident that the language of the Amendment makes no mention of Rhodesia, chromium, the United Nations, the embargo, treaty obligations, or any of the components which the Amendment was supposedly designed to deal with. The Amendment is cast in the language of Cold War trading policies and its entire provisions are structured in terms of Communist and non-Communist countries and Presidential options. The extraordinary silence of the statute about the United Nations was doubtless the result of a deliberate effort by the managers of the bill not to raise too many questions in the minds of their confrères who would be asked to vote for it.

For the very reason that the sponsors of the Byrd Amendment were obscure in their expressions and their language, for that reason should this Court insist upon the rule of construction that goes back to the days of Chief Justice Marshall. Only in that way can the nation be sure that when the Congress takes the extraordinary step of dealing with treaty obligations of the United States it will act with the deliberateness and responsibility that such a step requires.

III

The decision below fails to recognize the impact of this Nation's commitment to the United Nations as affecting treaty obligations of this nation to that body.

Before the creation of the United Nations, this country, as an expression of its own sovereignty, asserted its power to renounce treaty obligations. Indeed, every nation in the world had asserted such power. All that we have dis-

cussed above assumes the continued existence of the power to renounce ordinary treaty obligations; we have dealt above only with questions as to which branches of the government may exercise that power and the manner in which it may be exercised. But these questions must be viewed anew in the light of the commitment of the United States to the United Nations.

The U.N. Charter is in some limited* respects an attempt to overcome the unrestricted power of member states to ignore their obligations. In this country, fear of limiting our sovereignty by adherence to an international body was a powerful argument against our joining the League of Nations. At the conclusion of World War II, the nation considered that it should exercise world responsibilities, having been drawn into two world wars. But then the United States and the other great powers insisted that the U.N. Charter provide for them a "veto power" so that they would not be bound by resolutions of which they did not approve.

The question then is, what are the implications of the commitment of the United States when it has *not* exercised its veto power?

When this nation agreed to this international constitutional document, it clearly understood that the commitment entailed "some limitation on our freedom of action." Thus, the report of the U. S. Department of State on the results of the San Francisco Conference said:

> "This will represent a notable change in our foreign policy and in our military policy. But if it means

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* It should be noted that Article 41 of the Charter provides only for mandatory economic sanctions; it makes no provision for mandatory military sanctions.

> a far-reaching commitment, entailing expense and some limitation on our freedom of action, it must be weighed against what it is designed to prevent —the appalling cost in men and material wealth of another war. Nor can we overlook the fact that other states, not so powerful as we, will assume relatively heavy obligations without retaining the large measure of control which the United States will enjoy as one of the permanent members of the Security Council (the veto power)." Publication No. 2349, p. 88.

Having indicated that there was some limitation placed on our freedom of action, the State Department went on to assert with respect to Article 39: "If any single provision of the Charter has more substance than the others, it is surely this one sentence in which are concentrated the most important powers of the Security Council." (*Id.* at 90-91).

Article 39 provides:

> "The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security."

It becomes eminently clear that the U.N. Charter was not intended as, and is not, simply a treaty. It is that, but it is much more. It is a system and an organization for the maintenance of world peace. It is a system within which the government of the United States has made all necessary reservations for the protection of its own sovereignty, to wit, its power to veto any substantive res-

olution before the Security Council. This extraordinary status is recognized in the Charter itself in Article 103.*

There remains the question with respect to resolutions adopted under Articles 25 and 41, does this nation ever have the power to withdraw from its commitment? Arguably, upon failure to exercise the veto power, the United States would have surrendered its free-wheeling right to abrogate its commitment to the U.N. without even discussing it with the Security Council or proceeding under Article 50 to seek an exception.** That, after all, is what we expected of every other nation which joined that body and which was not one of the major powers which retained the veto power. But assuming that in some fashion this nation nevertheles reserved its right to abrogate its obligations, it becomes even the more necessary that this Court clarify who within this government has that power and how it should be exercised. The decision of the Court of Appeals, while referring to the United States as being in "blatant disregard of its treaty obligations", would leave in a wholly confused state critical questions as to the internal operations of our government in this area.

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* Article 103 provides:

> "In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail."

** The reluctance of the United States to proceed under this provision may well have been predicated upon the fact that the concern of this violation is stainless steel kitchenware!

CONCLUSION

Traditionally, the courts have diligently scrutinized these Congressional enactments whose implementation by the executive have raised conflicts with the enforcement of prior treaties. These judicial inquiries have been mandated by the Constitutional pronouncement that treaties are the supreme law of the land, and infused with a vital realization that treaties help form the necessary bond of trust and intercourse between nations. Never before has this Court been confronted with a situation where a high judicial body has pronounced with such forcefulness that this nation has acted "in blatant disregard of our treaty obligations." In the face of that, this Court cannot permit the continuation of such obvious fuzziness as to who within our government is responsible therefor and how the sovereign rights of our nation are to be exercised. The relations between our country and the U.N. are too important to permit that lack of clarity to continue.

The petition for a writ of certiorari should be granted.

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** Counsel for Petitioners which to acknowledge the invaluable assistance they have received from Burt Lockwood of the Center for International Studies at New York University and from Anne Margulies.

APPENDIX

United Nations Charter

(Signed by the United States on June 26, 1945, at the U.N. Conference on International Organization, at San Francisco, California)

Chapter V, Article 25:

> "The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter."

Chapter VII, Article 41:

> "The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions and it may call upon Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio and other means of communication, and the severance of diplomatic relations."

Resolution 232 (1966) Adopted by the Security Council on 16 December 1966

The Security Council,

Reaffirming its resolutions 216 (1965) of 12 November 1965, 217 (1965) of 20 November 1965 and 221 (1966) 19 April 1966, and in particular its appeal to all States to do their utmost to break off economic relations with Southern Rhodesia.

Deeply concerned that the Council's efforts so far and the measures taken by the administering Power have failed to bring the rebellion in Southern Rhodesia to an end,

Reaffirming that, to the extent not superseded in the present resolution, the measures provided for in resolution 217 (1965), as well as those initiated by Member States in implementation of that resolution, shall continue in effect,

Acting in accordance with Articles 39 and 41 of the United Nations Charter,

Determines that the present situation in Southern Rhodesia constitutes a threat to international peace and security;

Decides that all States Members of the United Nations shall prevent:

The import into their territories of asbestos, iron ore, chrome, pig-iron, sugar, tobacco, copper, meat and meat products and hides, skins and leather originating in Southern Rhodesia and exported therefrom after the date of the present resolution;

Any activities by their nationals or in their territories which promote or are calculated to promote the export

of these commodities from Southern Rhodesia and any dealings by their nationals or in their territories in any of these commodities originating in Southern Rhodesia and exported therefrom after the date of the present resolution, including in particular any transfer of funds to Southern Rhodesia for the purposes of such activities or dealings:

Shipment in vessels or aircraft of their registration of any of these commodities originating in Southern Rhodesia and exported therefrom after the date of the present resolution;

Any activities by their nationals or in their territories which promote or are calculated to promote the sale or shipment to Southern Rhodesia of arms, ammunition of all types, military aircraft, military vehicles and equipment and materials for the manufacture and maintenance of arms and ammunition in Southern Rhodesia;

(*e*) Any activities by their nationals or in their territories which promote or are calculated to promote the supply to Southern Rhodesia of all other aircraft and motor vehicles and of equipment and materials for the manufacture, assembly, or maintenance of aircraft and motor vehicles in Southern Rhodesia; the shipment in vessels and aircraft of their registration of any such goods destined for Southern Rhodesia; and any activities by their nationals or in their territories which promote or are calculated to promote the manufacture or assembly of aircraft or motor vehicles in Southern Rhodesia;

Resolution 232 (1966) Adopted by the Security Council on 16 December 1966

(*f*) Participation in their territories or territories under their administration or in land or air transport facilities or by their nationals or vessels of their registration in the supply of oil or oil products to Southern Rhodesia;

notwithstanding any contracts entered into or licenses granted before the date of the present resolution;

3. *Reminds* Member States that the failure or refusal by any of them to implement the present resolution shall constitute a violation of Article 25 of the United Nations Charter;

4. *Reaffirms* the inalienable right of the people of Southern Rhodesia to freedom and independence in accordance with the Declaration on the Granting of Independence to Colonial Countries and Peoples contained in General Assembly resolution 1514(XV) of 14 December 1960, and recognizes the legitimacy of their struggle to secure the enjoyment of their rights as set forth in the Charter of the United Nations;

5. *Calls upon* all States not to render financial or other economic aid to the illegal racist régime in Southern Rhodesia;

6. *Calls upon* all States Members of the United Nations to carry out this decision of the Security Council in accordance with Article 25 of the United Nations Charter;

7. *Urges*, having regard to the principles stated in Article 2 of the United Nations Charter, States not Members of the United Nations to act in accordance with the provisions of paragraph 2 of the present resolution;

Resolution 232 (1966) Adopted by the Security Council on 16 December 1966

8. *Calls upon* States Members of the United Nations or members of the specialized agencies to report to the Secretary-General the measures which each has taken in accordance with the provisions of paragraph 2 of the present resolution;

9. *Requests* the Secretary-General to report to the Council on the progress of the implementation of the present resolution, the first report to be submitted not later than 1 March 1967;

10. *Decides* to keep this item on its agenda for further action as appropriate in the light of developments.

Resolution 253 (1968) Adopted by the Security Council on 29 May 1968

The Security Council,

Recalling and reaffirming its resolutions 216 (1965) of 12 November 1965, 217 (1965) of 20 November 1965, 221 (1966) of 9 April 1966, and 232 (1966) of 16 December 1966,

Taking note of resolution 2262 (XXII) adopted by the General Assembly on 3 November 1967,

Noting with great concern that the measures taken so far have failed to bring the rebellion in Southern Rhodesia to an end,

Reaffirming that, to the extent not superseded in this resolution, the measures provided for in resolutions 217 (1965) of 20 November 1965 and 232 (1966) of 16 December 1966, as well as those initiated by Member States in implementation of those resolutions, shall continue in effect,

Gravely concerned that the measures taken by the Security Council have not been complied with by all States and that some States, contrary to resolution 232 (1966) of the Security Council and to their obligations under Article 25 of the Charter of the United Nations, have failed to prevent trade with the illegal régime in Southern Rhodesia,

Condemning the recent inhuman executions carried out by the illegal régime in Southern Rhodesia which have flagrantly affronted the conscience of mankind and have been universally condemned,

Affirming the primary responsibility of the Government of the United Kingdom to enable the people of

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Resolution 253 (1968) Adopted by the Security Council on 29 May 1968

Southern Rhodesia to achieve self-determination and independence, and in particular their responsibility for dealing with the prevailing situation,

Recognizing the legitimacy of the struggle of the people of Southern Rhodesia to secure the enjoyment of their rights as set forth in the Charter of the United Nations and in conformity with the objectives of General Assembly resolution 1514 (XV) of 14 December 1960,

Reaffirming its determination that the present situation in Southern Rhodesia constitutes a threat to international peace and security,

Acting under Chapter VII of the Charter of the United Nations,

1. *Condemns* all measures of political repression, including arrests, detentions, trials and executions which violate fundamental freedoms and rights of the people of Southern Rhodesia, and calls upon the Government of the United Kingdom to take all possible measures to put an end to such actions;

2. *Calls upon* the United Kingdom as the administering Power in the discharge of its responsibility to take urgently all effective measures to bring to an end the rebellion in Southern Rhodesia, and enable the people to secure the enjoyment of their rights as set forth in the Charter of the United Nations and in conformity with the objectives of General Assembly resolution 1514 (XV);

3. *Decides* that, in furtherance of the objective of ending the rebellion, all States Members of the United Nations shall prevent:

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Resolution 253 (1968) Adopted by the Security Council on 29 May 1968

(*a*) The import into their territories of all commodities and products originating in Southern Rhodesia and exported therefrom after the date of this resolution (whether or not the commodities or products are for consumption or processing in their territories, whether or not they are imported in bond and whether or not any special legal status with respect to the import of goods is enjoyed by the port or other place where they are imported or stored);

(*b*) Any activities by their nationals or in their territories which would promote or are calculated to promote the export of any commodities or products from Southern Rhodesia; and any dealings by their nationals or in their territories in any commodities or products originating in Southern Rhodesia and exported therefrom after the date of this resolution, including in particular any transfer of funds to Southern Rhodesia for the purposes of such activities or dealings;

(*c*) The shipment in vessels or aircraft of their registration or under charter to their nationals, or the carriage (whether or not in bond) by land transport facilities across their territories of any commodities or products originating in Southern Rhodesia and exported therefrom after the date of this resolution;

(*d*) The sale or supply by their nationals or from their territories of any commodities or products (whether or not originating in their territories, but not including supplies intended strictly for medical purposes, educational equipment and material for use in schools and other educational institutions, publications, news material and, in

special humanitarian circumstances, food-stuffs) to any person or body in Southern Rhodesia or to any other person or body for the purposes of any business carried on in or operated from Southern Rhodesia, and any activities by their nationals or in their territories which promote or are calculated to promote such sale or supply;

(*e*) The shipment in vessels or aircraft of their registration, or under charter to their nationals, or the carriage (whether or not in bond) by land transport facilities across their territories of any such commodities or products which are consigned to any person or body in Southern Rhodesia, or to any other person or body for the purposes of any business carried on in or operated from Southern Rhodesia;

4. *Decides* that all States Members of the United Nations shall not make available to the illegal régime in Southern Rhodesia or to any commercial, industrial or public utility undertaking, including tourist enterprises, in Southern Rhodesia any funds for investment or any other financial or economic resources and shall prevent their nationals and any persons within their territories from making available to the régime or to any such undertaking any such funds or resources and from remitting any other funds to persons or bodies within Southern Rhodesia, except payments exclusively for pensions or for strictly medical, humanitarian or educational purposes or for the provision of news material and in special humanitarian circumstances, foodstuffs;

5. *Decides* that all States Members of the United Nations shall:

Resolution 253 (1968) Adopted by the Security Council on 29 May 1968

(*a*) Prevent the entry into their territories, save on exceptional humanitarian grounds, of any person travelling on a Southern Rhodesian passport, regardless of its date of issue, or on a purported passport issued by or on behalf of the illegal régime in Southern Rhodesia;

(*b*) Take all possible measures to prevent the entry into their territories of persons whom they have reason to believe to be ordinarily resident in Southern Rhodesia and whom they have reason to believe to have furthered or encouraged, or to be likely to further or encourage, the unlawful actions of the illegal régime in Southern Rhodesia or any activities which are calculated to evade any measure decided upon in this resolution or resolution 232 (1966) of 16 December 1966;

6. *Decides* that all States Members of the United Nations shall prevent airline companies constituted in their territories and aircraft of their registration or under charter to their nationals from operating to or from Southern Rhodesia and from linking up with any airline company constituted or aircraft registered in Southern Rhodesia;

7. *Decides* that all States Members of the United Nations shall give effect to the decisions set out in operative paragraphs 3, 4, 5 and 6 of this resolution notwithstanding any contract entered into or license granted before the date of this resolution;

8. *Calls upon* all States Members of the United Nations or of the specialized agencies to take all possible measures to prevent activities by their nationals and persons in their territories promoting, assisting or encourag-

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Resolution 253 (1968) Adopted by the Security Council on 29 May 1968

ing emigration to Southern Rhodesia, with a view to stopping such emigration;

9. *Requests* all States Members of the United Nations or of the specialized agencies to take all possible further action under Article 41 of the Charter to deal with the situation in Southern Rhodesia, not excluding any of the measures provided in that Article;

10. *Emphasizes* the need for the withdrawal of all consular and trade representation in Southern Rhodesia, in addition to the provisions of operative paragraph 6 of resolution 217 (1965);

11. *Calls upon* all States Members of the United Nations to carry out these decisions of the Security Council in accordance with Article 25 of the Charter of the United Nations and reminds them that failure or refusal by any one of them to do so would constitute a violation of that Article;

12. *Deplores* the attitude of States that have not complied with their obligations under Article 25 of the Charter, and censures in particular those States which have persisted in trading with the illegal régime in defiance of the resolutions of the Security Council, and which have given active assistance to the régime;

13. *Urges* all States Members of the United Nations to render moral and material assistance to the people of Southern Rhodesia in their struggle to achieve their freedom and independence;

14. *Urges,* having regard to the principles stated in Article 2 of the Charter of the United Nations, States not

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Resolution 253 (1968) Adopted by the Security Council on 29 May 1968

Members of the United Nations to act in accordance with the provisions of the present resolution;

15. *Requests* States Members of the United Nations, the United Nations Organization, the specialized agencies, and other international organizations in the United Nations system to extend assistance to Zambia as a matter of priority with a view to helping it solve such special economic problems as it may be confronted with arising from the carrying out of these decisions of the Security Council;

16. *Calls upon* all States Members of the United Nations, and in particular those with primary responsibility under the Charter for the maintenance of international peace and security, to assist effectively in the implementation of the measures called for by the present resolution;

17. *Considers* that the United Kingdom as the administering Power should ensure that no settlement is reached without taking into account the views of the people of Southern Rhodesia, and in particular the political parties favouring majority rule, and that it is acceptable to the people of Southern Rhodesia as a whole;

18. *Calls upon* all States Members of the United Nations or of the specialized agencies to report to the Secretary-General by 1 August 1968 on measures taken to implement the present resolution;

19. *Requests* the Secretary-General to report to the Security Council on the progress of the implementation of this resolution, the first report to be made not later than 1 September 1968;

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Resolution 253 (1968) Adopted by the Security Council on 29 May 1968

20. *Decides* to establish, in accordance with rule 28 of the provisional rules of procedure of the Security Council, a committee of the Security Council to undertake the following tasks and to report to it with its observations:

(*a*) To examine such reports on the implementation of the present resolution as are submitted by the Secretary-General;

(*b*) To seek from any States Members of the United Nations or of the specialized agencies such further information regarding the trade of that State (including information regarding the commodies and products exempted from the prohibition contained in operative paragraph 3 (*d*) above) or regarding any activities by any nationals of that State or in its territories that may constitute an evasion of the measures decided upon in this resolution as it may consider necessary for the proper discharge of its duty to report to the Security Council;

21. *Requests* the United Kingdom, as the administering Power, to give maximum assistance to the committee, and to provide the committee with any information which it may receive in order that the measures envisaged in this resolution and resolution 232 (1966) may be rendered fully effective;

22. *Calls upon* all States Members of the United Nations, or of the specialized agencies, as well as the specialized agencies themselves, to supply such further information as may be sought by the Committee in pursuance of this resolution;

23. *Decides* to maintain this item on its agenda for further action as appropriate in the light of developments.

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Resolution 314 (1972) Adopted by the Security Council on 28 February 1972

The Security Council,

Having considered the recent developments concerning the question of Southern Rhodesia,

Recalling its resolutions 216 (1965) of 12 November 1965, 217 (1965) of 20 November 1965, 221 (1966) of 9 April 1966, 232 (1966) of 16 December 1966, 253 (1968) of 29 May 1968, 277 (1970) of 18 March 1970 and 288 (1970) of 17 November 1970,

Gravely concerned that certain States have not complied with the provisions of resolution 253 (1968), contrary to their obligations under Article 25 of the Charter of the United Nations,

Taking into account the fourth report of the Committee established in pursuance of Security Council resolution 253 (1968) (S/10229) and its interim report of 3 December 1971 (S/10408),

Acting in accordance with previous decisions of the Security Council on Southern Rhodesia, taken under *Chapter VII of the Charter,*

1. *Reaffirms* its decision that the present sanctions against Southern Rhodesia shall remain fully in force until the aims and objectives set out in resolution 253 (1968) are completely achieved;

2. *Urges* all States to implement fully all Security Council resolutions establishing sanctions against Southern Rhodesia, in accordance with their obligations under Article 25 and Article 2 (6) of the Charter, and deplores the attitude of those States which have persisted

Resolution 314 (1972) Adopted by the Security Council on 28 February 1972

in giving moral, political and economic assistance to the illegal régime;

3. *Declares* that any legislation passed, or act taken, by any State with a view to permitting, directly or indirectly, the importation from Southern Rhodesia of any commodity falling within the scope of the obligations imposed by resolution 253 (1968), including chrome ore, would undermine sanctions and would be contrary to the obligations of States;

4. *Calls upon* all States to refrain from taking any measures that would in any way permit or facilitate the importation from Southern Rhodesia of commodities falling within the scope of the obligations imposed by resolution 253 (1968), including chrome ore;

5. *Draws the attention* of all States to the need for increasing vigilance in implementing the provisions of resolution 253 (1968) and, accordingly, calls upon them to take more effective measures to ensure full implementation of the sanctions;

6. *Requests* the Committee established in pursuance of Security Council resolution 253 (1968) to meet as a matter of urgency to consider ways and means by which the implementation of sanctions may be ensured and to submit to the Security Council not later than 15 April 1972 a report containing recommendations in this respect, including any suggestions which the Committee might wish to make concerning its terms of reference and any other measures designed to ensure the effectiveness of its work;

7. *Requests* the Secretary-General to provide all appropriate assistance to the Committee in the discharge of its task.

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Sec. 5, United Nations Participation Act, as amended (22 U.S.C., § 287(c)):

§ 287c. *Enforcement of economic and communication sanctions; penalties*

(a) Notwithstanding the provisions of any other law, whenever the United States is called upon by the Security Council to apply measures which said Council has decided, pursuant to article 41 of said Charter, are to be employed to give effect to its decisions under said Charter, the President may, to the extent necessary to apply such measures, through any agency which he may designate, and under such orders, rules, and regulations as may be prescribed by him, investigate, regulate, or prohibit, in whole or in part, economic relations or rail, sea, air, postal, telegraphic, radio, and other means of communication between any foreign country or any national thereof or any person therein and the United States or any person subject to the jurisdiction thereof, or involving any property subject to the jurisdiction of the United States.

(b) Any person who willfully violates or evades or attempts to violate or evade any order, rule, or regulation issued by the President pursuant to subsection (a) of this section shall, upon conviction, be fined not more than $10,000 or, if a natural person, be imprisoned for not more than ten years, or both; and the officer, director, or agent of any corporation who knowingly participates in such violation or evasion shall be punished by a like fine, imprisonment, or both, and any property, funds, securities, papers, or other articles or documents, or any vessel, together with her tackle, apparel, furniture, and equipment, or vehicle, or aircraft, concerned in such violation shall be forfeited to the United States.

Executive Order No. 11322
Jan. 5, 1967, 4 F.R. 119

TRANSACTIONS INVOLVING SOUTHERN RHODESIA

By virtue of the authority vested in me by the Constitution and laws of the United States, including section 5 of the United Nations Participation Act of 1945 (59 Stat. 620), as amended (22 U. S. C. 287c) [this section], and section 301 of Title 3 of the United States Code [section 301 of Title 3, The President], and as President of the United States, and considering the measures which the Security Council of the United Nations, by Security Council Resolution No. 232 adopted December 16, 1966, has decided upon pursuant to article 41 of the Charter of the United Nations, and which it has called upon all members of the United Nations, including the United States, to apply it is hereby ordered:

Section 1. The following are prohibited effective immediately, notwithstanding any contracts entered into or licenses granted before the date of this Order:

(a) The importation into the United States of asbestos, iron ore, chrome, pig-iron, sugar, tobacco, copper, meat and meat products, and hides, skins and leather originating in Southern Rhodesia and exported therefrom after December 16, 1966, or products made therefrom in Southern Rhodesia or elsewhere.

(b) Any activities by any person subject to the jurisdiction of the United States, which promote or are calculated to promote the export from Southern Rhodesia after December 16, 1966, of any of the commodities specified in subsection (a) of this section originating in Southern Rhodesia, and any dealings by any such per-

son in any such commodities or in products made therefrom in Southern Rhodesia or elsewhere, including in particular any transfer of funds to Southern Rhodesia for the purposes of such activities or dealings: *Provided,* however, that the prohibition against the dealing in commodities exported from Southern Rhodesia or products made therefrom shall not apply to any such commodities or products which, prior to the date of this Order, had been imported into the United States.

(c) Shipment in vessels or aircraft of United States registration of any of the commodities specified in subsection (a) of this section originating in Southern Rhodesia, and exported therefrom after December 16, 1966, or products made therefrom in Southern Rhodesia or elsewhere.

(d) Any activities by any person subject to the jurisdiction of the United States, which promote or are calculated to promote the sale or shipment to Southern Rhodesia of arms, ammunition of all types, military aircraft, military vehicles and equipment, and materials for the manufacture and maintenance of arms and ammunition in Southern Rhodesia.

(e) Any activities by any person subject to the jurisdiction of the United States, which promote or are calculated to promote the supply to Southern Rhodesia of all other aircraft and motor vehicles, and of equipment and materials for the manufacture, assembly, or maintenance of aircraft or motor vehicles in Southern Rhodesia; the shipment in vessels or aircraft of United States registration of any such goods destined for Southern Rhodesia; and any activities by any persons subject to the juris-

diction of the United States, which promote or are calculated to promote the manufacture or assembly of aircraft or motor vehicles in Southern Rhodesia.

(f) Any participation in the supply of oil or oil products to Southern Rhodesia (i) by any person subject to the jurisdiction of the United States, or (ii) by vessels or aircraft of United States registration, or (iii) by the use of any land or air transport facility located in the United States.

Sec. 2. The functions and responsibilities for the enforcement of the foregoing prohibitions are delegated as follows:

(a) To the Secretary of State, the function and responsibility of enforcement relating to the importation into, or exportation from the United States of articles, including technical data, the control of the importation or exportation of which is provided for in section 414 of the Mutual Security Act of 1954 (68 Stat. 848), as amended (22 U.S.C. 1934) [section 1934 of this title], and has been delegated to the Secretary of State by section 101 of Executive Order No. 10973 of September 3, 1961 [set out as a note under section 2381 of this title].

(b) To the Secretary of Commerce, the function and responsibility of enforcement relating to—

(i) the exportation from the United States of articles other than the articles, including technical data, referred to in subsection (a) of this section; and

(ii) the transportation in vessels or aircraft of United States registration of any commodities the transportation of which is prohibited by section 1 of this Order.

Executive Order No. 11322
Jan. 5, 1967, 4 F.R. 119

(c) To the Secretary of the Treasury, the function and responsibility of enforcement to the extent not delegated under subsections (a) or (b) of this section.

Sec. 3. The Secretary of State, the Secretary of the Treasury and the Secretary of Commerce shall exercise any authority which such officer may have apart from the United Nations Participation Act of 1945 [this chapter] or this Order so as to give full effect to this Order and Security Council Resolution No. 232.

Sec. 4. (a) In carrying out their respective functions and responsibilities under this Order, the Secretary of the Treasury and the Secretary of Commerce shall consult with the Secretary of State. Each such Secretary shall consult, as appropriate, with other government agencies and private persons.

(b) Each such Secretary shall issue such regulations, licenses, or other authorizations as he considers necessary to carry out the purposes of this Order and Security Council Resolution No. 232.

Sec. 5. (a) The term "United States", as used in this Order in a geographical sense, means all territory subject to the jurisdiction of the United States.

(b) The term "person" means an individual, partnership, association, or other unincorporated body of individuals, or corporation.

LYNDON B. JOHNSON.

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Executive Order No. 11419
July 29, 1968, 33 F.R. 10837

TRADE AND OTHER TRANSACTIONS INVOLVING SOUTHERN RHODESIA

By virtue of the authority vested in me by the Constitution and laws of the United States, including section 5 of the United Nations Participation Act of 1945 (59 Stat. 620), as amended (22 U.S.C. 287c) [this section], and section 301 of Title 3 of the United States Code [section 301 of Title 3, The President], and as President of the United States, and considering the measures which the Security Council of the United Nations by Security Council Resolution No. 253 adopted May 29, 1968, has decided upon pursuant to article 41 of the Charter of the United Nations, and which it has called upon all members of the United Nations, including the United States, to apply, it is hereby ordered:

Section 1. In addition to the prohibitions of section 1 of Executive Order No. 11322 of January 5, 1967 [set out as a note under this section], the following are prohibited effective immediately, notwithstanding any contracts entered into or licenses granted before the date of this Order:

(a) Importation into the United States of any commodities or products originating in Southern Rhodesia and exported therefrom after May 29, 1968.

(b) Any activities by any person subject to the jurisdiction of the United States which promote or are calculated to promote the export from Southern Rhodesia after May 29, 1968, of any commodities or products originating in

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Southern Rhodesia, and any dealings by any such person in any such commodities or products, including in particular any transfer of funds to Southern Rhodesia for the purposes of such activities or dealings; *Provided,* however, that the prohibition against the dealing in commodities or products exported from Southern Rhodesia shall not apply to any such commodities or products which, prior to the date of this Order, had been lawfully imported into the United States.

(c) Carriage in vessels or aircraft of United States registration or under charter to any person subject to the jurisdiction of the United States of any commodities or products originating in Southern Rhodesia and exported therefrom after May 29, 1968.

(d) Sale or supply by any person subject to the jurisdiction of the United States, or any other activities by any such person which promote or are calculated to promote the sale or supply, to any person or body in Southern Rhodesia or to any person or body for the purposes of any business carried on in or operated from Southern Rhodesia of any commodities or products. Such activities, including carriage in vessels or aircraft, may be authorized with respect to supplies intended strictly for medical purposes, educational equipment and material for use in schools and other educational institutions, publications, news material, and foodstuffs required by special humanitarian circumstances.

(e) Carriage in vessels or aircraft of United States registration or under charter to any person subject to the jurisdiction of the United States of any commodities or products consigned to any person or body in Southern

Rhodesia, or to any person or body for the purposes of any business carried on in or operated from Southern Rhodesia.

(f) Transfer by any person subject to the jurisdiction of the United States directly or indirectly to any person or body in Southern Rhodesia of any funds or other financial or economic resources. Payments exclusively for pensions, for strictly medical, humanitarian or educational purposes, for the provision of news material or for foodstuffs required by special humanitarian circumstances may be authorized.

(g) Operation of any United States air carrier or aircraft owned or chartered by any person subject to the jurisdiction of the United States or of United States registration (i) to or from Southern Rhodesia or (ii) in coordination with any airline company constituted or aircraft registered in Southern Rhodesia.

Sec. 2. The functions and responsibilities for the enforcement of the foregoing prohibitions, and of those prohibitions of Executive Order No. 11322 of January 5, 1967 specified below, are delegated as follows:

(a) To the Secretary of Commerce, the function and responsibility of enforcement relating to—

(i) the exportation from the United States of commodities and products other than those articles referred to in section 2(a) of Executive Order No. 11322 of January 5, 1967; and

(ii) the carriage in vessels of any commodities or products the carriage of which is prohibited by section 1 of

this Order or by section 1 of Executive Order No. 11322 of January 5, 1967.

(b) To the Secretary of Transportation, the function and responsibility of enforcement relating to the operation of air carriers and aircraft and the carriage in aircraft of any commodities or products the carriage of which is prohibited by section 1 of this Order or by section 1 of Executive Order No. 11322 of January 5, 1967.

(c) To the Secretary of the Treasury, the function and responsibility of enforcement to the extent not previously delegated in section 2 of Executive Order No. 11322 of January 5, 1967, and not delegated under subsections (a) and (b) of this section.

Sec. 3. The Secretary of the Treasury, the Secretary of Commerce, and the Secretary of Transportation shall exercise any authority which such officer may have apart from the United Nations Participation Act of 1945 [sections 287-287e of this title] or this Order so as to give full effect to this Order and Security Council Resolution No. 253.

Sec. 4. (a) In carrying out their respective functions and responsibilities under this Order, the Secretary of the Treasury, the Secretary of Commerce, and the Secretary of Transportation shall consult with the Secretary of State. Each such Secretary shall consult, as appropriate, with other government agencies and private persons.

(b) Each such Secretary shall issue such regulations, licenses or other authorizations as he considers necessary to carry out the purposes of this Order and Security Council Resolution No. 253.

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Executive Order No. 11419
July 29, 1968, 33 F.R. 10837

Sec. 5. (a) The term "United States," as used in this Order in a geographical sense, means all territory subject to the jurisdiction of the United States.

(b) The term "person" means an individual, partnership, association or other unincorporated body of individuals, or corporation.

Sec. 6. Executive Order No. 11322 of January 5, 1967, implementing United Nations Security Council Resolution No. 232 of December 16, 1966, shall continue in effect as modified by sections 2, 3, and 4 of this Order.

LYNDON B. JOHNSON

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Byrd Amendment (Sec. 503 of the Military Procurement Act of 1971, effecting an amendment to the Strategic and Critical Materials Procurement Act, 50 U.S.C., § 98-98(h), 85 Stat. 427)

"Sec. 10. Notwithstanding any other provision of law, on and after January 1, 1972, the President may not prohibit or regulate the importation into the United States of any material determined to be strategic and critical pursuant to the provisions of this Act, if such material is the product of any foreign country or area not listed as a Communist-dominated country or area in general headnote 3(d) of the Tariff Schedules of the United States (19 U.S.C. § 1202), for so long as the importation into the United States of material of that kind which is the product of such Communist-dominated countries or areas is not prohibited by any provision of law."

General License issued by the Office of Foreign Assets Control, 37 F. Reg. 1108

Title 31—Money and Finance: Treasury
Chapter V—Office of Foreign Assets Control, Department of the Treasury

Part 530—Rhodesian Sanctions Regulations

Removal of Controls on Importation of Rhodesian Strategic and Critical Materials

A general license is being issued under the Rhodesian Sanctions Regulations authorizing imports of strategic and critical materials of Southern Rhodesian origin, and of ferrochrome produced from Rhodesian chromite. This license is issued in connection with the enactment of Title V, section 503, Public Law 92-156, 85 Stat. 427 (November 17, 1971). The license also authorizes transfers in payment for commodities the importation of which is licensed by the section, to the extent that such transfers do not exceed the amounts customarily paid on the world market for comparable commodities.

Part 530 is amended by adding a new section, reading as follows:

§ 530.518 *Certain materials listed under Strategic and Critical Material-Stockpiling Act.*

(a) Except as provided in paragraph (b) of this section, all transactions incidental to the importation into the United States of the following commodities are hereby authorized:

(1) Chromium: Ore and concentrates thereof Southern Rhodesian origin—Schedule 6, Part 1, Item 601.15, Tariff Schedules of the United States (TSUS).

General License issued by the Office of Foreign Assets Control, 37 F. Reg. 1108

(2) Ferrochrome produced in any country from chromium ore or concentrates of Southern Rhodesian origin.

(3) Any other material of Southern Rhodesian origin determined to be strategic and critical pursuant to the provisions of the Strategic and Critical Materials Stock Piling Act (60 Stat. 596; 50 U.S.C. 98-98h), so long as the importation of such material from any country or area listed in general headnote 3(e) of the Tariff Schedules of the United States (19 U.S.C. 1202(3)(e)) is not prohibited by any provision of law.

(b) This section does not authorize payment of the purchase price for a commodity imported under this section if such price exceeds the price per pound customarily paid at the time of purchase on the world market for that commodity in arms-length dealings between other buyers and sellers.

(c) (1) District Directors of Customs shall not accept or allow any entry with respect to merchandise imported under this section unless it is accompanied by a report containing the following information:

(i) Name and address of importer on record

(ii) Name and address of buyer

(iii) Name of commodity

(iv) Quantity entered (in pounds)

(v) Name and address of shipper

(vi) Name and address of seller

(vii) Port of exportation

(viii) Price per pound f.o.b. port of exportation

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(ix) Details of payment (letter of credit, bank transfer, etc., including names of banks and identifying numbers for payment instruments).

(2) The district director shall promptly forward this report to the Office of Foreign Assets Control, Treasury Department, Washington, D.C. 20220. The district director shall also satisfy himself that the importer or his agent has mailed a duplicate copy of this report directly to the Office of Foreign Assets Control.

(3) In cases where more than one entry is made with respect to the same lot of merchandise (e.g., warehouse entry; in-transit entry; consumption entry) only one such report is required to be filed with respect to that lot.

STANLEY L. SOMMERFIELD,
Acting Director,
Office of Foreign Assets Control.

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Letter from the Department of State

DEPARTMENT OF STATE
Washington

May 20, 1972

The Honorable
Gale W. McGee,
United States Senate,
Washington, D. C.

Dear Senator McGee:

In response to your request, I am writing to confirm the Administration's support for Section 503 of the State Department Authorization Bill, S. 3526, which would repeal existing legislation permitting the importation of chrome and other strategic materials from Southern Rhodesia.

The Administration opposed that legislation last year and considers that there are several compelling reasons for its repeal now. As we pointed out prior to passage, the measure adopted last year has put the United States in violation of its international legal obligations: a most serious step which the Administration then maintained and still believes was not warranted by circumstances. The legislation now under consideration by the Senate would allow the United States once again to comply fully with its international treaty obligations.

Repeal now would serve to make us less vulnerable to unfavorable international reaction. As a result of the legislation now in force, our international interests have suffered in other respects. In Africa, where our position on Rhodesia has heretofore been seen as a test of

our commitment to self-determination and racial equality, our credibility has suffered. The depth of African concern has been particularly strong in some nations where our interests far outweigh those in Rhodesia. In the United Nations, we will face, with each shipment of chrome or other commodity, an increasing erosion of our position. While we have sought and continue to seek means of making the existing sanctions against Rhodesia more effective, and less liable to circumvention by others, our ability to do so is seriously limited by the legislation now in effect.

Finally, the Administration continues to hold the view that neither economic nor national security considerations affecting chrome are sufficiently compelling to compensate for the adverse foreign policy consequences of the legislation now in effect. There are 2.2 million tons of excess chrome ore in the stockpile; legislation authorizing release of 1.3 million tons has already been approved this year by the Senate. This amount alone would meet our total chrome needs for about 18 months, and defense requirements amount to only about 10% of total needs. Industry stocks are high, and we continue to have access to chrome ore from a variety of other foreign sources. In short, there was no chrome shortage last year and there is none now. Moreover, the legislation now in effect permits the importation from Rhodesia of other strategic list items in addition to chrome, and under it we may expect a variety of materials including asbestos, nickel, and other minerals to be imported. The adverse international reactions to such transactions in our judgment would outweigh any possible economic advantage, and there is on strategic grounds no need to import any of these materials from Rhodesia.

Letter from the Department of State

As will be clear from the foregoing, we have been increasingly concerned about the serious effects of the existing legislation upon United States foreign policy interests. For all of the reasons mentioned, the Administration believes that the passage of Section 503 would further those interests.

With kindest regards,

Sincerely,

JOHN M. IRWIN II
John M. Irwin II
Acting Secretary

Excerpt from Report of the Office of Emergency Preparedness as of June 30, 1971

[PHOTOSTATS]

(Opposite) ☛

SUMMARY OF GOVERNMENT INVENTORIES, OBJECTIVES, EXCESSES AND BALANCE OF DISPOSAL AUTHORIZATIONS

Basic Stockpile Materials
June 30, 1971

(Market Value - $ Millions)

Commodity	Unit	Objective	Total Inventory[1]	Market Value[2]	Uncommitted Excess	Market Value[2]	Balance of Disposal Authorization
1. Aluminum	ST	450,000	1,281,267	$743.1	831,267	$482.1	831,267[3]
2. Aluminum Oxide, Fused	ST	300,000	427,495	76.1	127,495	18.9	127,495
3. Antimony	ST	40,700	46,747	63.0	6,047[4]	7.6	0
4. Asbestos, Amosite	ST	18,400	59,315	12.6	40,915[4]	8.7	8,076
5. Asbestos, Chrysotile	ST	13,700	12,029	5.9	1,086	0.2	1,073
6. Bauxite, Metal, Jamaica	LDT	5,000,000	8,858,881	120.3	3,858,881[5]	52.4	714,000
7. Bauxite, Metal, Surinam	LDT	5,300,000	5,300,000	54.3	0	0	0
8. Bauxite, Refractory	LCT	173,000	173,000	8.8	0	0	0
9. Beryl	ST	28,000	40,341	70.7	12,341[6]	27.0	2,451
10. Bismuth	LB	2,100,000	2,335,457	14.0	235,457	1.4	235,457
11. Cadmium	LB	6,000,000	10,147,806	22.8	4,147,806	9.3	4,147,806
12. Castor Oil	LB	50,000,000	58,449,720	11.0	8,449,720	1.4	8,425,478
13. Chromite, Chemical	SDT	250,000	570,449	12.7	320,449[4]	7.2	0
14. Chromite, Metallurgical	SDT	3,086,800	5,331,613	596.6	2,244,813[7]	143.7	930,589
15. Chromite, Refractory	SDT	368,000	1,195,249	32.1	827,249	22.2	795,249
16. Chromium Metal	ST	3,775	8,013	18.4	4,238[4]	9.7	0
17. Cobalt	LB	38,200,000	77,701,349	169.2	39,501,349	85.1	39,501,349
18. Columbium	LB	1,176,000	9,408,494	22.9	5,946,463[4]	10.0	935,747
19. Copper	ST	775,000	258,682	279.6	0	0	0
20. Cordage Fibers, Abaca	LB	25,000,000	64,836,564	15.9	39,836,564[4]	9.8	14,924,929
21. Cordage Fibers, Sisal	LB	100,000,000	198,771,886	16.1	98,771,886[4]	8.0	0
22. Diamond Dies, Small	PC	25,000	25,473	1.0	473	0.02	0
23. Diamond, Industrial Bort	KT	23,700,000	42,611,479	101.4	18,911,479[4]	42.6	0
24. Diamond, Industrial Stones	KT	20,000,000	25,141,634	311.6	5,141,634[4]	78.0	177,840
25. Feathers and Down	LB	3,000,000	3,000,000	10.9	0	0	0
26. Fluorspar, Acid Grade	SDT	540,000	891,974	67.8	1,974[8]	.1	1,974
27. Fluorspar, Metallurgical	SDT	850,000	411,788	24.7	0	0	0
28. Graphite, Natural, Ceylon	ST	5,500	5,499	1.0	0	0	0
29. Graphite, Natural, Malagasy	ST	18,000	31,197	3.5	13,257	1.5	13,257
30. Graphite, Other	ST	2,600	2,800	0.6	0	0	0
31. Iodine	LB	8,000,000	8,011,814	15.5	11,814	0.02	0
32. Jewel Bearings	PC	57,500,000	59,454,246	19.2	14,726,698[10]	0.4	0
33. Lead	ST	530,000	1,133,905	328.8	603,905[7]	175.1	105,772
34. Manganese, Battery, Natural	SDT	135,000	308,350	27.3	173,350	14.5	173,350
35. Manganese, Battery, Synthetic Dioxide	SDT	1,900	19,667	9.1	17,767[4]	8.2	12,962

SUMMARY OF GOVERNMENT INVENTORIES, OBJECTIVES, EXCESSES AND BALANCE OF DISPOSAL AUTHORIZATIONS (Continued)

Basic Stockpile Materials
June 30, 1971

(Market Value - $ Millions)

Commodity	Unit	Objective	Total Inventory[1]	Market Value[2]	Uncommitted Excess	Market Value[2]	Balance of Disposal Authorization
36. Manganese Ore, Chemical A	SDT	35,000	146,914	$ 10.3	111,914	$ 7.8	111,914
37. Manganese Ore, Chemical B	SDT	35,000	100,838	7.1	65,838	4.6	65,838
38. Manganese, Metallurgical	SDT	4,000,000	11,896,166	430.1	7,949,791[4]	241.9	3,519,902
39. Mercury	FL	126,500	200,105	58.0	73,605[5]	21.3	0
40. Mica, Muscovite Block St./better	LB	6,000,000	14,410,033	54.6	7,650,533[6] [11]	15.7	6,308,798
41. Mica, Muscovite Film, 1 & 2 quality	LB	2,000,000	1,468,980	16.5	640[6] [11]	0	640
42. Mica, Muscovite Splittings	LB	19,000,000	41,704,558	50.0	22,704,558[6]	27.2	21,004,683
43. Mica, Phlogopite Block	LB	150,000	168,580	0.1	151,859	0.03	151,859
44. Mica, Phlogopite Splittings	LB	950,000	4,806,943	7.7	3,856,943[6]	6.2	3,507,345
45. Molybdenum	LB	0	42,603,508	76.9	42,603,508[7]	76.9	6,090,723
46. Nickel	ST	0	40,006	106.1	40,006[7]	106.1	0
47. Opium	AvLB	143,000	141,602	14.0	88	0.005	0
48. Platinum Group, Iridium	TrOz	17,000	17,176	2.6	184[6]	0.03	0
49. Platinum Group, Palladium	TrOz	1,300,000	1,249,738	46.2	0	0	0
50. Platinum Group, Platinum	TrOz	555,000	450,076	54.0	0	0	0
51. Pyrethrum	LB	63,375[13]	63,375	0.6	0	0	0
52. Quartz Crystals	LB	320,000	4,974,653	54.1	4,654,653[6]	50.4	4,324,653
53. Quinidine	OZ	2,000,000	1,800,377	4.2	0	0	0
54. Quinine	OZ	4,130,000	3,548,161	5.8	0	0	0
55. Rubber	LT	200,000	341,924	133.1	141,924	55.3	141,924
56. Rutile	SDT	100,000	56,525	10.5	0	0	0
57. Sapphire & Ruby	KT	18,000,000	16,305,592	0.2	0	0	0
58. Shellac	LB	1,000,000	6,252,029	2.9	5,252,029[6]	2.4	2,352,029
59. Silicon Carbide, Crude	ST	30,000	196,453	42.6	166,453[7]	36.1	0
60. Silver	(fine)TrOz	139,500,000	139,500,000	220.0	0	0	0
61. Sperm Oil	LB	23,400,000	23,402,661	6.1	0	0	0
62. Talc, Steatite Block & Lump	ST	200	1,204	0.4	1,004	0.3	1,004
63. Tantalum	LB	3,400,000	4,181,102	39.2	968,123[14]	8.0	0
64. Thorium Oxide	ST	40	40[15]	0.3	0	0	0
65. Tin	LT	232,000	251,632	935.7	19,632	73.0	19,632
66. Titanium Sponge	ST	33,500	35,015	85.6	8,514	18.0	8,514
67. Tungsten	LB	60,000,000	129,141,867	368.0	69,141,867	194.4	68,886,097
68. Vanadium	ST	540	3,307	21.5	2,767[6]	18.6	1,567

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SUMMARY OF GOVERNMENT INVENTORIES, OBJECTIVES, EXCESSES AND BALANCE OF DISPOSAL AUTHORIZATIONS (Continued)

Basic Stockpile Materials
June 30, 1971

(Market Value - $ Millions)

Commodity	Unit	Objective	Total Inventory[1]	Market Value[2]	Uncommitted Excess	Market Value[2]	Balance of Disposal Authorization
69. Vegetable Tannin, Chestnut	LT	9,500	21,297	$ 7.3	11,797[4]	$ 4.7	11,282
70. Vegetable Tannin, Quebracho	LT	50,600	188,103	55.1	137,503[4]	38.8	102,216
71. Vegetable Tannin, Wattle	LT	9,500	34,289	8.8	24,789[4]	6.4	19,328
72. Zinc	ST	560,000	1,119,958	358.4	559,958[7]	179.2	44,784

FOOTNOTES

[1] Total inventory consists of stockpile and nonstockpile grades and reflects uncommitted balance.

[2] Market values are estimated from prices at which similar materials are being traded; or in the absence of trading data, at an estimate of the price which would prevail in the market. Prices used are unadjusted for normal premiums and discounts relating to contained qualities or normal freight allowances. *The market values do not necessarily reflect the amount that would be realized at time of sale.*

[3] Committed for sale but undelivered under long term contracts.

[4] Balance of excess pending Congressional approval.

[5] Balance of excess; disposal planning deferred due to market conditions.

[6] Excess quantity includes 3,617 ST in beryllium copper master alloy and 3,160 ST in beryllium metal.

[7] Balance of excess deferred by the Congress.

[8] Excludes that quantity represented by tantalum contained in columbium minerals.

[9] Excludes 350,000 SDT credited to metallurgical fluorspar.

[10] Factory inspecting feasibility of reworking bearings to meet stockpile specifications.

[11] Excludes 759,500 LBS credited to mica, muscovite film.

[12] Excludes 51,087 LBS nonstockpile quality material for which Congressional approval has been requested. Deficit in objective covered by crediting muscovite block, ST/better mica against this requirement.

[13] Objective established July 14, 1971.

[14] Material required in upgrading.

[15] Thorium nitrate credited as 40 ST thorium oxide, $0.3 million market value.

ABBREVIATIONS

FL - Flask
KT - Carat
LB - Pound
LCT - Long Calcined Ton
LDT - Long Dry Ton
LT - Long Ton
OZ - Ounce
PC - Piece
SDT - Short Dry Ton
ST - Short Ton
TrOz - Troy Ounce

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Exhibit A

Opinion of the United States District Court for the District of Columbia, dated June 19, 1972

Morton Stavis, Esq., Doris Peterson, Esq., Andre M. Surena, Esq., Peter Weiss, Esq., Rhonda Copelon Schoenbrod, Esq., Herbert O. Reid, Sr., Esq., David Rein, Esq., Joel Carlson, Esq., a member of the Bar of South Africa and Southwest Africa, admitted *pro hac vice,* and Haywood Burns, Attorneys for Plaintiffs.

James M. Johnstone, Esq., L. Mark Wine, Esq., Thomas C. Arthur, Esq., Kirkland, Ellis & Rowe, Washington, D. C., and Patrick J. Morgan, Esq., of New York for the Defendant, Union Carbide Corporation.

Harold H. Titis, Jr., United States Attorney, and Robert S. Rankin, Jr., Assistant United States Attorney, for the defendants John B. Connally, Stanley L. Sommerfield, and Myles J. Ambrose.

William W. Scott, Esq., of Collier, Shannon, Rill and Edwards, Washington, D. C., and William S. Rawls, Esq., of Ballard, Spahr, Andrews and Ingersoll, Philadelphia, Pennsylvania, appearing specially for the Defendant Foote Mineral Company.

* * *

In 1965, a white minority government declared its Unilateral Independence from Great Britain and constituted itself as Southern Rhodesia. The acts of this white minority to dominate and segregate a black majority on a black continent precipitated action by the United Nations. The United States of America, in concert with the

other member nations of the United Nations Security Council, resolved that this Rhodesian government was "illegal." Mandatory economic sanctions were passed designed to cripple the newly constituted Ian Smith regime. Six years later, the United States decided it was in their best economic interests to import "strategically denoted goods" from this same "illegal" government.[1] The sanctions broken, it is alleged the United Nations efforts to ruin Ian Smith's racist society are doomed.

This suit seeks permanent injunctive relief preventing the importation from Southern Rhodesia of metallurgical chromite and other materials.[2] Further, the suit seeks a permanent mandatory order directing government officials to seize and impound items illegally imported into the United States. A declaratory judgment is also requested stating that the General License issued by the Office of Foreign Asset Control of the United States Treasury Department (37 Fed. Reg. 1108) authorizing imports of metallurgical chromite and other materials from Southern Rhodesia is null and void, and not authorized by the

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[1] The Court recognizes by this suit that there remain idealistic persons desirous of placing humanity above the price differential between Russian and Rhodesian chromite.

[2] The importation of the chromite being barred by resolutions adopted by the United Nations Security Council and implemented by Executive Orders No. 11322, January 5, 1967, and No. 11419, July 29, 1968.

Exhibit A

"Byrd Amendment," § 503 of the Military Procurement Act of 1971, P.L. 92-156.[3]

The plaintiffs in this case consist of American Congressmen, Southern Rhodesian citizens presently domiciled in the United States, Committees of both American and Foreign origin that are dedicated to upholding law and justice and energized against racism, missionary groups that have been harassed by Rhodesian officials and denied an ability to conduct business in Rhodesia, Rhodesian refugee groups representing oppressed black Rhodesians, and authors whose books are presently banned by the Censors of the Rhodesian Government.

The defendants include John B. Connally, as Secretary of the Treasury, Stanley Sommerfield, as Acting Director of the Office of Foreign Assets Control, Myles J. Ambrose, as Commissioner of the Bureau of Customs, and two corporations, Foote Mineral Company and Union Carbide Corporation, for importing Rhodesian chromite under licenses granted by the Office of Foreign Assets Control.

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[3] The Amendment in pertinent part reads:

> "Sec. 10. Notwithstanding any other provision of law, on and after January 1, 1972, the President may not prohibit or regulate the importation into the United States of any material determined to be strategic and critical pursuant to the provisions of this Act, if such material is the product of any foreign country or area not listed as a Communist-dominated country or area in general headnote 3(d) of the Tariff Schedules of the United States (19 U.S.C. 1202), for so long as the importation into the United States of material of that kind which is the product of such Communist-dominated countries or areas is not prohibited by any provision of law.

Exhibit A

On April 20, 1972, this Court heard argument on and denied plaintiffs' Motion For A Temporary Restraining Order. On April 28, 1972, a hearing was held concerning plaintiffs' Motion For A Preliminary Injunction. This request was similarly denied. Hearing was held May 25, 1972, on Motions to Dismiss or For Summary Judgment. These motions were taken under advisement.[4]

The questions of law have been exhaustively briefed and argued. There are several sensitive questions of law in issue. It is this Courts' determination that resolution of one major issue pretermits all other considerations. For the following reasons, it is held as a matter of law that none of these plaintiffs possess the requisite *standing* to bring this suit.

There is here the necessity to discuss briefly the history and rational of the "standing" requirement in Federal suits.[5] Judicial power of Federal Courts is restricted by Article III of the Constitution to "cases" and "controversies." These words have been described as having, "an iceberg quality, containing beneath their surface simplicity submerged complexities which go to the very heart of our constitutional form of government."[6] They serve

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[4] The Court, on May 30, 1972, granted Foote Mineral Company's Motion To Dismiss For Lack Of Personal Jurisdiction.

[5] The legal term "standing" has been construed, narrowed, and reviewed in several recent cases. Sierra Club v. Morton, 40 U. S. L. W. 4397, April 19, 1972; EDF v. EPA, No. 71-1365 (D. C. Cir. May 5, 1972, footnote One); Johnson v. C. B. Morton, 456 F. 2d 68 (5th Cir. 1972).

[6] Flast v. Cohen, 392 U. S. 83, 94 (1968).

as reminders that Federal courts are ones of limited jurisdiction and that courts should only decide cases that are presented in an adversary context, historically viewed as capable of judicial resolution.[7] These words aid the judiciary in defining its role in the tripartite allocation of power, insuring that Federal courts will not trespass into circles denoted for the other branches of our government. The limitations placed upon Federal courts by the "case" and "controversy" doctrine are summed in one term of art—Justiciability.

Justiciability has many facets, standing being but one. The standing question is surrounded by the same complexities and vagaries that inhere in justiciability. The concept of standing is occasionally amorphous, serving periodically as a shorthand expression for all facets of justiciability.[8] Out of this complexity, certain straight lines are discernable.

The paramount focus of standing is on the party seeking to get his complaint adjudicated before a Federal court. Does the party allege such a personal stake in the outcome as to assure concrete adversity and sharpened presentations of issues? Is the person the proper party to request an adjudication of the particular issues? In ruling on standing, it is appropriate for the Court to further view the substantive issues to determine if there is a logical nexus between the status asserted and the claim sought to be adjudicated.[9] All these questions must be answered favorably for standing to be achieved.

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[7] *Id.* at 95.

[8] *Id.* at 99.

[9] *Id.* at 99, 100, 102.

Exhibit A

The Supreme Court, in *Association of Data Processing Service Organizations* v. *Camp*, 397 U. S. 150 (1970) formulated a dual test for standing. This "modernized law of standing" remains intact, reaffirmed by recent Supreme Court pronouncement.[10] The dual test inquires first whether the plaintiffs alleged that the challenged action has caused them "injury in fact," economic or otherwise. Secondly, the test queries whether the interest sought to be protected is arguably within the zone of interests to be protected or regulated by the statute, "treaty" or constitutional guarantee in question. This dual test for standing verily recognized that "injury in fact," suffered or anticipated, included aesthetic, conservational, environmental, recreational and economic interests.[11] The situation remains here that when the emphasis is placed on whether the person invoking a Federal court's jurisdiction has suffered or anticipates "injury in fact," the weakness of plaintiffs' standing argument crystalizes.

Recapitulating, the following facts allegedly produced the injury to plaintiffs in this case. In 1965, the white minority population of Southern Rhodesia seized power, declared a Unilateral Declaration of Independence from Great Britain, and announced its intention to retain white minority rule over the majority black population of Rhodesia. This white government has expelled or otherwise prevented some of the plaintiffs from enjoying life, liberty, property or the pursuits of happiness within the confines of Southern Rhodesia, has denied certain plain-

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[10] Sierra Club v. Morton, 40 U. S. L. W. 4397, April 19, 1972.

[11] Association of Data Processing Service Organization v. Camp, 397 U. S. 150 (1970).

tiffs travel privileges to Rhodesia, and has banned the sale of books written by other of the plaintiffs.

Second, the United Nations Security Council adopted mandatory embargo resolutions designed to collapse the newly constituted government of Southern Rhodesia. Plaintiffs claim that this mandatory embargo ameliorates their alleged injury. The United States of America joined in these resolutions and implemented them through Executive Orders of the President.

Third, in 1971, the Congress of the United States passed the "Byrd Amendment" permitting the importation of Rhodesian chromite into the United States as long as cromite was imported from any communist dominated country. General licenses were issued to Foote Mineral Company and Union Carbide Corporation permitting them to import chromite from Southern Rhodesia, ostensibly in violation of the letter and spirit of the United Nations sanctions.

Fourth, plaintiffs all claim that the action of the United States Congress "injures them in fact." This action gives aid and comfort to the economy of an "illegal" government in contravention of the United Nations mandatory economic sanctions. These sanctions were designed to assuage plaintiffs' original injury created by the white minority takeover in Southern Rhodesia.

Upon this record, it is apparent that the injury to these plaintiffs stems originally and wholly from the fact that the white minority government still reigns in Rhodesia. Plaintiffs contend that without the "Byrd Amendment" the continuance of the "illegal" Rhodesian government may not be possible, therefore, their interests are directly

injured by the action of Congress. It is the opinion of this Court that, while tangentially related to the original injury, this Congressional action does not suffice to create either "injury in fact" or a federal nexus to the injury suffered by plaintiffs. A change in Congressional priorities bottoms all that can be said to have a causal connection to the alleged injury in this case. This fact is best illustrated by reviewing the injury to each plaintiff named in the amended complaint.

Plaintiffs Shirley A. Chisholm, William Lacy Clay, George Washington Collins, Ronald V. Dellums, Walter E. Fauntroy, Augustus F. Hawkins, Ralph H. Metcalfe, Robert N. C. Nix. Episcopal Churchmen For Southern Africa, IFCO-ACTION, Southern Africa Committee, Southern Christian Leadership Conference, Edward Weisband, Bert B. Lockwood, Jr., Shelly Fenchel, Joel Carlson, Robert Goldschmidt, Robert Janosik, Nigel Rodley, Diane Flaherty, and Antoine Van Dongen all fail to allege in their amended complaint that they themselves suffer or will suffer personal individualized injury within the meaning of the recent Supreme Court decision, *Sierra Club* v. *Rogers C. B. Morton*, No. 70-34, April 18, 1972, 40 U. S. L. W. 4397, April 19, 1972. There, the Supreme Court decided that the "injury in fact" test for standing requires "more than an injury to a cognizable interest. It requires that the party seeking review be himself among the injured.[12] The above-named plaintiffs do not meet this requirement.

Of the remaining plaintiffs, Charles C. Diggs, John Conyers, Charles B. Rangel, Louis B. Stokes, and Thomas M. Franck, are all American citizens that allege "injury

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[12] *Supra*, note 10.

in fact" from the refusal of the Rhodesian government to permit them entry into Rhodesia. The American Committee on Africa alleges "injury in fact" from the circumstances that its Chairman, George Houser, is not permitted entry into the country of Rhodesia. The Council For Christian Social Action of the United Church of Christ claims "injury in fact" because some of their missionaries have been arrested and deported from Rhodesia. Davis M'Gabe and the Zimbabwe African National Union claim "injury in fact" from the existence of the white minority regime in Rhodesia, because, as "outlawed" Rhodesian refugees they are subject to arrest, imprisonment, or worse upon return to their country. Gore Vidal claims economic injury because Rhodesia has banned the sale of his book, *Myra Breckinridge,* in their country. All of these plaintiffs claim to be beneficiaries of the United Nations Security Council's mandatory economic sanctions lodged against Rhodesia. As previously outlined, these plaintiffs claim injury from the fact that the Congress of the United States chose to pass the "Byrd Amendment" in contravention of our treaty obligations, and permitted licenses to be given to two corporations for the importation of Rhodesian chromite.

Theoretically, these remaining plaintiffs have a stake in having the regime in Southern Rhodesia fall. Indeed, it may even be greater than the real desires of all civilized people to see racially oriented governments decline. Realistically, there is true adversity presented here, and the presentations of counsel have honed the issues. But there are further considerations to a determination on standing. It is appropriate for this Court to determine if there is a logical nexus between the status asserted by these plaintiffs, and the claim they seek adjudicated.

Exhibit A

The plaintiffs remaining here are hard pressed to show either "injury in fact" or a logical nexus between their injury and the actions of the United States Congress. The injury to these plaintiffs existed originally and completely due to the acts of a white minority in Southern Rhodesia. Neither the Congress nor the courts are able to absolve that original injury. The passage of the "Byrd Amendment" does not increase the pain or suffering felt by missionaries, refugees, travelers, or authors as originally inflicted. The Act merely reflects an attitude and priority change in the superstructure of Congress. Plaintiffs' alleged injury due to the possibility that the Act will prolong the existence of the present Rhodesian regime is tenuous at best. It merely is an adjunct to the already severe injury to world concepts caused by the Unilateral Declaration of Independence.

Plaintiffs' various injuries are not sufficiently related to congressional action to form that "logical nexus" between the status asserted by plaintiffs and the claim they seek to adjudicate.[13] The United States does not prevent any person from going to Rhodesia. Congress does not prevent the sale of books in Rhodesia. The United States licenses and provides passports for persons to sell books in, or travel to Rhodesia. The "Byrd Amendment" possesses no "logical nexus" to plaintiffs' injury.[14] There-

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[13] *Cf.* Flast v. Cohen, 392 U. S. 83 (1968); Association of Data Processing Service Organizations v. Camp, 397 U. S. 150 (1970).

[14] Rhodesia is the offensive party. The United Nations stated this through its sanctions to which we agreed. Congress has, however, lawfully rejected the concept of economic sanctions against Rhodesia. The reasons for the statute may not be as altruistic as those for the United Nations sanctions but they were strong enough to pass Congressional vote.

fore, it is held that none of the multitudinous plaintiffs named herein have the requisite status to bring this suit.[15]

This Court believes comment is necessary on other indicia for dismissal that are separate and apart from the issue of standing. Traditionally, courts do not entertain political questions even though such questions involve actual controversies. This policy is based on the doctrines of separation of powers and the policy of judicial self-restraint.

This case presents the type of issues that have previously been held not within the jurisdiction of courts. Generally, questions involving large matters of basic national policy in foreign affairs present no judicially cognizable issues and courts are not empowered to decide them. It is fundamental that the Congressional action challenged by the pleadings plainly fall in that area where the executive and legislative branches are supreme and final; reviewable only by the electorate, not by the courts.

> Such decisions are wholly confided by our Constitution to the political departments of the government. Executive and Legislative. They are delicate, complex, and involve large elements of prophecy. They are and should be undertaken only by those directly responsible to the people whose welfare they advance or imperil. They are decisions of a kind for which the Judiciary had neither aptitude, facilities nor responsibility and which has

[15] This Court makes no consideration as to who would be able to satisfy the strictures of standing in this case.

> long been held to belong in the domain of political power not subject to judicial intrusion or inquiry.[16]

Judges are not ordained to review the political judgments of elected representatives of the people. The people are at the mercy of their elected representatives when decisions on foreign policy are made. The basis and important corollary is that elected representatives are subject to removal by the people, United States Judges are not.

> This elementary fact about the nature of our system which seems to have escaped notice occasionally must make manifest to judges that we are neither gods nor godlike, but judicial officers with narrow and limited authority. Our entire system of Government would suffer incalculable mischief should judges attempt to interpose the judicial will above that of the Congress and President, *even were we so bold as to assume that we can make better decisions on such issues.* (Emphasis added.)[17]

The same principles of judicial restraint are applicable in this case.

The circumstances here resound with political and foreign policy considerations. Congress partially renounced its treaty obligation with most of the world's nations when it passed the "Byrd Amendment." Congress has the Constitutional authority to abrogate, in whole or in

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[16] *Chicago & Southern Air Lines* v. *Waterman S. S. Co.*, 333 U. S. 103 (1948).

[17] *Pauling* v. *McNamara*, 331 F. 2d 796 (D. C. Cir. 1964).

part, the treaty obligations of the United States. Clearly, with reference to the legislative history of the "Byrd Amendment," Congress was legislating to permit the importation into this country of Rhodesian goods classified as strategic if these same goods were imported from a communist dominated country.[18] This was a political, economic, and foreign policy determination.[19] It is not for this Court to strike down an otherwise Constitutional statute upon the theory that it was motivated and passed for impermissible reasons.[20] The voters of our country are the only ones in this case who may judge the actions of their representatives. This Court, under the law, is without power to do so.

Motions of Defendants to Dismiss for Lack of Standing are granted, and Motion for Summary Judgment by Plaintiffs is hereby denied.

An appropriate Order shall be entered.

AUMBREY E. ROBINSON, JR.
Judge

June 19, 1972

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[18] S. Rep. No. 92-359, 92d Cong., 1st Sess., 1971.

[19] It remains uncontested that this country imports chromite from the United Soviet Socialist Republic. Therefore, the licenses granted under this law are valid as long as the goods are strategic. It is further uncontested that chromite is on the list of strategic goods. The statute does not require that a new determination of strategic need be made after the passage of this amendment. Indeed, it is questionable whether the goods need even be used for national defense or security purposes. The legislative history of the "Byrd Amendment" clearly outlines that it was general industrial need for reasonably priced chromite that precipitated the law, not national security.

[20] *United States* v. *O'Brien*, 391 U. S. 367, 383 (1968); *Palmer* v. *Thompson*, 403 U. S. 217, 224-226 (1971).

Exhibit B

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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 72-1642

CHARLES COLES DIGGS, ET AL., APPELLANTS

v.

GEORGE P. SHULTZ, SECRETARY OF TREASURY, ET AL.

Appeal from the United States District Court
for the District of Columbia

Decided October 31, 1972

Mr. Morton Stavis, with whom *Mr. David Rein* was on the brief, for appellants.

Mr. Edward S. Christenbury, Attorney, Department of Justice with whom *Mr. Robert L. Keuch,* Attorney, Department of Justice, was on the brief, for appellee, Shultz.

Mr. James M. Johnstone, with whom *Mr. Thomas C. Arthur* was on the brief, for appellee, Union Carbide Corporation.

Before BAZELON, *Chief Judge,* WILBUR K. MILLER, *Senior Circuit Judge* and MCGOWAN, *Circuit Judge.*

Exhibit B

McGowan, *Circuit Judge*: This is an appeal from the dismissal by the District Court of a complaint seeking declaratory and injunctive relief in respect of the importation of metallurgical chromite from Southern Rhodesia. The gravamen of this action was an asserted conflict between (1) the official authorization of such importation by the United States, and (2) the treaty obligations of the United States under the United Nations Charter. Plaintiff-appellants sought summary judgment, as did defendant-appellees alternatively to a motion to dismiss for failure to state a claim upon which relief could be given.

The District Court's ruling for appellees was grounded primarily upon lack of standing, but it encompassed as well a concept of the nonjusticiability of the issues raised. Although we believe there was standing upon the part of at least some of the appellants to pursue their cause of action judicially, we think that cause is not one in respect of which relief can be granted. Accordingly, we affirm the judgment of dismissal.

I

In 1966 the Security Council of the United Nations, with the affirmative vote of the United States, adopted Resolution 232 directing that all member states impose an embargo on trade with Southern Rhodesia—a step which was reaffirmed and enlarged in 1968. In compliance with this resolution, the President of the United States issued Executive Orders 11322 and 11419, 22 U.S.C. § 287c, establishing criminal sanctions for violation of the embargo. In 1971, however, Congress adopted the so-called Byrd Amendment to the Strategic and Critical Materials Stock Piling Act, 50 U.S.C. § 98-98h, which provides in part:

> Sec. 10. Notwithstanding any other provision of law . . . the President may not prohibit or regulate the importation into the United States of any material

Exhibit B

> determined to be strategic and critical pursuant to the provisions of this Act, if such material is the product of any foreign country or area not listed as a Communist-dominated country or area . . . for so long as the importation into the United States of material of that kind which is the product of such Communist-dominated countries or areas is not prohibited by any provision of law.

Since Southern Rhodesia is not a Communist-controlled country, and inasmuch as the United States imports from Communist countries substantial quantities of metallurgical chromite and other materials available from Rhodesia, the Byrd Amendment contemplated the resumption of trade by this country with Southern Rhodesia. By direction of the President, the Office of Foreign Assets Control issued to the corporate appellees in this case a General License authorizing the importation of various materials from Southern Rhodesia, and they began importation.

Alleging that the Byrd Amendment did not and could not authorize issuance of such a license contrary to this country's treaty obligations, appellants sought to enjoin further importation, to require official seizure, and to restrain use, of materials already imported under the General License, and to declare the General License null and void.

II

The question of standing turns first on whether the party seeking relief has alleged a sufficient personal interest in the controversy to insure concrete adverseness in the presentation of the issues. *Data Processing Service v. Camp,* 397 U.S. 150, 152 (1969); *Baker v. Carr,* 369 U.S. 186, 204 (1962). Appellants allege various personal injuries, and we agree with the District Court that these

allegations amply provide the injury in fact element of the standing requirement.[1]

Another requirement of standing is that the complainant be within the zone of interests sought to be protected by the law in question. *Data Processing Service v. Camp*, 397 U.S. 150, 153 (1969). United Nations Security Council Resolution 232 was—and is—an attempt by means of concerted international pressure to turn the Rhodesian Government away from the course of action which has resulted in the adverse circumstances experienced by appellants. They are unquestionably within the reach of its purpose and among its intended beneficiaries.

Finally, the concept of standing has been characterized as contemplating that there be a "logical nexus between the status asserted and the claim sought to be adjudicated," in order to insure that the litigant is the proper party to represent the interests involved. *Flast v. Cohen*, 392 U.S. 83, 102 (1967).[2] The District Court found the causal rela-

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[1] We adopt the District Court's identification of those plaintiffs who meet the injury in fact requirement. Appellants M'Gabe and Zimbabive complain they are unable to return to their homeland, Rhodesia. Appellants Diggs, Conyers, Rangel, Stokes and Franck all alleged that they have been refused entry into Rhodesia; and the American Committee on Africa complains that its chairman has also been denied entry. The Council for Christian Social Action of the United Church of Christ alleges its missionaries have been arrested and deported from Rhodesia. Appellant Vidal asserts injury because sale of one of his books is banned in Rhodesia. None of the other plaintiffs have standing; and it is not contended in this court that they have.

[2] It is far from clear that this formulation adds anything of substance to the two requirements just discussed. It states a proposition that can well be thought to be related to the merits of a claim rather than to the existence of standing to press it. The District Court, with some support in Supreme

tionship of appellants' claims to the challenged actions too attenuated to constitute such a nexus. That finding rested largely on the conclusion that appellants' quarrel was really with the Rhodesian Government rather than with appellees. But that view fails to focus on the exact nature of the grievance appearing in the complaint.

Appellants, along with many other persons, have suffered, and continue to suffer, tangible injuries at the hands of Southern Rhodesia. In an attempt to terminate the policies giving rise to those wrongs, the United Nations, with the United States as an assenting member, established the embargo. The precise injury of which appellants complain in this law suit is allegedly illegal present action *by the United States* which tends to limit the effectiveness of the embargo and thereby to deprive appellants of its potential benefits. That quarrel is directly and immediately with this government, and not with Southern Rhodesia.

Appellees suggest that the prospects of significant relief by means of the embargo are so slight that this relationship of intended benefit is too tenuous to support standing. But this strikes us as tantamount to saying that because the performance of the United Nations is not always equal to its promise, the commitments of a member may be disregarded without having to respond in court to a charge of treaty violation. It may be that the particular economic sanctions invoked against Southern Rhodesia in this instance will fall short of their goal, and that appellants will ultimately reap no benefit from them. But, to persons situated as are appellants, United Nations action constitutes the only hope; and they are personally aggrieved and injured by the dereliction of any member state which weakens the

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Court language, chose to pursue the question as an aspect of standing, although the rationale followed by it is relevant to its dismissal for failure to state a claim warranting relief.

capacity of the world organization to make its policies meaningful.

Of course it is true that appellants' plight stems initially from acts done by Southern Rhodesia, and that their primary quarrel is with it. But this does not foreclose the existence of a judicially cognizable dispute between appellants, on the one hand, and appellees, on the other, who are said to be acting in derogation of the solemn treaty obligation of the United States to adhere to the embargo for so long as it is in being.[3]

III

The District Court, in its comments to the effect that non-justiciability would necessitate dismissal of the complaint even if standing be found, reasoned as follows: It is settled constitutional doctrine that Congress may nullify, in whole or in part, a treaty commitment. Congress, by the Byrd Amendment in 1971, acted to abrogate one aspect of our treaty obligations under the U.N. Charter, that is to say, our continued participation in the economic sanctions taken against Southern Rhodesia. The considerations underlying that step by Congress present issues of political policy which courts do not inquire into. Thus, appellants' quarrel is with Congress, and it is a cause which can be pursued only at the polls and not in the courts.

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[3] The passage of the Byrd Amendment was the subject of widespread notice and comment within the United Nations, resulting in the reaffirmation by the Security Council on February 8, 1972 of the sanctions against Southern Rhodesia. The resolution to this end declared that any legislation passed by any member state "with a view to permitting, directly or indirectly, the importation from Southern Rhodesia of any commodity falling within the scope of the obligations imposed (by the 1968 resolution), including chrome ore, would undermine sanctions and would be contrary to the obligations of States."

Exhibit B

In this court appellants do not seriously contest the first of these propositions, namely, the constitutional power of Congress to set treaty obligations at naught.[4] They seek, rather, to show that, in the Byrd Amendment, Congress did not really intend to compel the Executive to end United States observance of the Security Council's sanctions, and that, therefore, it is the Executive which is, without the essential shield of Congressional dispensation, violating a treaty engagement of this country. Appellants point out in this regard that the Byrd Amendment does not in terms require importation from Southern Rhodesia, but leaves open two alternative courses of action. The statute says the President may not ban importation from Rhodesia of materials classified as critical and strategic unless importation from Communist countries is also prohibited. Instead of permitting resumption of trade with Rhodesia, the President, so it is said, could (1) have banned importation of these materials from Communist nations as well as from Rhodesia, or (2) have taken steps to have these materials declassified, thereby taking them in either case out of the scope of the Byrd Amendment.

Citing the canon of construction that a statute should, if possible, be construed in a manner consistent with treaty

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[4] Moser v. United States, 341 U.S. 41, 45 (1951); Clark v. Allen, 331 U.S. 503, 508-9 (1947); Pigeon River Co. v. Cox, 291 U.S. 138, 160 (1934); Edge v. Robertson, 112 U.S. 580, 597 (1884).

Although appellants concede that Congress has the power to override treaty obligations (Appellants' Br. at 23), they contend that our commitment to the U.N. has more force than an ordinary treaty. Appellants argue on the basis of their interpretation of the U.N. Charter that Congress could override Resolution 232 only by withdrawing from the U.N. entirely. There is, however, no evidence that this country's membership in that organization was intended to be on the all-or-nothing basis suggested by appellants.

obligations, appellants argue that the Byrd Amendment, although discretionary on its face, should be construed to compel the President to take one or the other of these two steps as a means of escape from the necessity of breaching the U.N. Charter. But these alternatives raise questions of foreign policy and national defense as sensitive as those involved in the decision to honor or abrogate our treaty obligations.[5] To attempt to decide whether the President chose properly among the three alternatives confronting him "would be not to decide a judicial controversy, but to assume a position of authority over the governmental acts of another and co-equal department, an authority which plainly we do not possess." *Frothingham v. Mellon*, 262 U.S. 447, 489 (1923).

We think that there can be no blinking the purpose and effect of the Byrd Amendment. It was to detach this country from the U.N. boycott of Southern Rhodesia in blatant

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[5] Russia supplied 60 per cent of our metallurgical chromite in 1970 while the embargo was being observed by the United States, S. Rep. No. 92-359, 92d Cong., 1st Sess., 121 (1971), and a decision to discontinue importation would be a serious step in a very delicate area. Similarly, the decision to remove certain materials from the critical and strategic list should be done in a manner consistent with the objectives of that act. 50 U.S.C. § 98. Appellants' view would require reclassification of materials without regard to whether they continue to be critical to national defense. Appellants argue that the apparent surplus in the stockpile indicates the materials are no longer critical. This confuses two distinct functions under the act. One is classification of materials as strategic or critical in order to encourage their development in this country and to avoid dangerous dependency upon other nations. The other is the acquisition of certain quantities of these materials to be stockpiled for use in an emergency. A surplus in the stock pile at a given moment does not mean that it is no longer necessary to be concerned about the dependency of this country on outside sources for the materials in question.

disregard of our treaty undertakings. The legislative record shows that no member of Congress voting on the measure was under any doubt about what was involved then; and no amount of statutory interpretation now can make the Byrd Amendment other than what it was as presented to the Congress, namely, a measure which would make—and was intended to make—the United States a certain treaty violator. The so-called options given to the President are, in reality, not options at all. In any event, they are in neither case alternatives which are appropriately to be forced upon him by a court.[6]

Under our constitutional scheme, Congress can denounce treaties if it sees fit to do so, and there is nothing the other branches of government can do about it. We consider that this is precisely what Congress has done in this case; and therefore the District Court was correct to the extent that it found the complaint to state no tenable claim in law.

Affirmed.

WILBUR K. MILLER, *Senior Circuit Judge,* concurs in the result.

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[6] The Supreme Court in *Baker v. Carr* was at pains to point out that the so-called "political question doctrine" is an aspect of the separation of powers prescribed by the Federal Constitution; and that, in the intra-federal context, it continues to have meaningful vitality to restrain interference by one branch of the federal establishment with concerns committed to another. The case before us is a classic one for the careful appraisal by a court of the consequences of an exercise of jurisdiction it may technically be thought to have.

Exhibit C

Order of the United States Court of Appeals for the District of Columbia Circuit

No. 72-1642

CHARLES COLES DIGGS, *et al.*,

Appellants,

v.

GEORGE P. SHULTZ, Secretary of Treasury, *et al.*,

Appeal from the United States District Court for the District of Columbia

Before BAZELON, Chief Judge
WILBUR K. MILLER, Senior Circuit Judge and
McGOWAN, Circuit Judge.

JUDGMENT

This cause came on to be heard on the record on appeal from the United States District Court for the District of Columbia and was argued by counsel.

On consideration thereof it was ordered and adjudged by this Court that the judgment of the District Court appealed from in this cause is hereby affirmed.

Per Curiam for the Court Hugh E. Klein.

Dated October 31, 1972.

Opinion by Circuit Judge McGOWAN

Senior Circuit Judge MILLER concurs in the result.